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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PARALLEL NETWORKS LICENSING, LLC,))
Plaintiff,) VOLUME 4
v.) Civil Action
MICROSOFT CORPORATION,) 13-2073-KAJ
Defendant.)

Thursday, May 11, 2017
8:30 a.m.
Courtroom 4A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE KENT A. JORDAN, U.S.C.C.J.

APPEARANCES:

YOUNG CONAWAY STARGATT & TAYLOR

BY: ADAM POFF, ESQ.

-and-

McKOOL SMITH, P.C.

BY: DOUGLAS A. CAWLEY, ESQ.

BY: CHRISTOPHER BOVENKAMP, ESQ.

BY: JUSTIN ALLEN, ESQ.

BY: ANGELA VORPAHL, ESQ.

BY: JOHN CAMPBELL, ESQ.

BY: KEVIN HESS, ESQ.

BY: LEAH BURATTI, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2
3 FISH & RICHARDSON
4 BY: JUANITA BROOKS, ESQ.
5 BY: MARTINA TYREUS HUFNAL, ESQ.

6 Counsel for the Defendants
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1 THE COURT: Good morning. Please
2 be seated. We're here together because I
3 understand Parallel Networks wants to change the
4 claim construction. Got that right?

5 MR. CAMPBELL: Yes, Your Honor.

6 THE COURT: Knock yourself out,
7 Mr. Campbell.

8 MR. CAMPBELL: Your Honor, we
9 believe the Court should issue a supplemental
10 claim construction under the '02 Micro decision.
11 The Federal Circuit clearly stated the scope of
12 the claim in its decision in the Oracle case.
13 It stated that the releasing limitation can be
14 shown if the page server releases the hardware
15 resources, e.g., memory, microprocessor cycles
16 of the web server. And Dr. Long yesterday
17 expressly disagreed with that scope of the claim
18 that releasing microprocessor cycles was
19 sufficient. And based on his disagreement with
20 the Federal Circuit we believe the Court should
21 issue a supplemental claim construction to
22 clarify that that is within the scope of the
23 claim and it satisfies a releasing limitation.

24 THE COURT: All right. Thanks,

1 Mr. Campbell. Who is speaking for this on
2 behalf of Microsoft?

3 MS. BROOKS: I will, Your Honor.
4 We did have an opportunity, albeit early this
5 morning, to file a response. I don't know if
6 Your Honor got it.

7 THE COURT: No. I haven't seen
8 it.

9 MS. BROOKS: We tried to get it in
10 as soon as we could, Your Honor, but obviously
11 this came in at 10:40 or something last night.
12 So let me just summarize if I could. First of
13 all, Dr. Long's testimony is not contradictory
14 to the Fed Circuit. He was asked the question,
15 do you agree that we can show infringement as
16 long as either -- and then they read the '02
17 Micro language and he said no, I don't think so.
18 Well, what he was saying is just because you
19 don't meet one limitation,
20 you -- just because you might meet one
21 limitation, there's two others you don't meet,
22 so no, you still haven't shown infringement. So
23 I didn't open any kind of a door that would
24 necessitate a new construction. Also the Fed

1 Circuit didn't actually construe the releasing
2 limitation. Neither party appealed that they --
3 and they were simply in dicta having a
4 discussion about it. Parallel Networks was the
5 party that sought and obtained the constructions
6 in this case and still stands even after the
7 '02 -- even after the Oracle case came down.
8 They never asked the Court to change that
9 construction. Microsoft actually did. Parallel
10 Networks said no and the Court agreed with
11 Parallel Networks. They have no excuse for not
12 raising this issue earlier. Dr. Long, in his
13 expert report, actually discussed how he and
14 Dr. Jones appeared to be interpreting what it
15 means to release, one in a more narrow fashion,
16 one in a broader fashion. The prejudice
17 obviously to us would be very significant.

18 But probably more important, Your
19 Honor, is that this isn't a question of law,
20 this is a question of fact. The term has been
21 construed. '02 Micro, the term hadn't been
22 construed and the parties were disagreeing as to
23 what the construction should be and the Court
24 declined to give one. Here the Court gave one,

1 Parallel Networks' proposed construction. And
2 in denying our motion for JMOL, I pointed out
3 where Dr. Jones had said that that piece of
4 memory was not released and Your Honor pointed
5 out well, but he also said there was some sort
6 of a processor that was released and the jury
7 could decide that that was enough. So it's a
8 question of fact as Your Honor has found, not a
9 question of law and so there was no dispute
10 about what the construction meant. No need to
11 do a new construction. Rather, it's now a
12 question of fact as to whether or not they agree
13 with Dr. Long that that construction -- that
14 that element isn't there or they agree with
15 Dr. Jones that that element is.

16 THE COURT: All right. Thanks.

17 MR. CAMPBELL: Briefly, Your
18 Honor, to address Ms. Brooks' points. The first
19 point, the question -- what led to that question
20 was Mr. Bovenkamp asking Dr. Long, I want to
21 touch on one last topic with you Dr. Long. I
22 want to talk about intercepting which we have,
23 but I also want to talk about the releasing of
24 the web server to process other requests. That

1 was another non-infringement argument you made,
2 correct? That led into the question whether he
3 agreed with the Federal Circuit and he said no.
4 So it wasn't a saying no because I've got these
5 two other arguments. It was I don't agree with
6 the Federal Circuit's interpretation here. I
7 think you've got to do some more specific.
8 Releasing microprocessor circles is not enough.
9 So I think that's a mistake. Ms. Brooks said
10 there's a disagreement about the interpretation
11 of the claim. Dr. Jones was interpreting it one
12 way in accordance with the Federal Circuit and
13 Dr. Long is interpreting it a different way.
14 That's a claim construction dispute.

15 THE COURT: I thought Dr. Jones
16 offered the claim construction you asked for.
17 Are you telling me Dr. Jones changed his
18 interpretation that he testified he was
19 operating under?

20 MR. CAMPBELL: No, Your Honor.

21 THE COURT: That's what it sounds
22 like you just said. Did Dr. Jones or did not
23 Dr. Jones from the stand say he was operating
24 under the claim construction as given by this

1 Court which not incidentally is the claim
2 construction suggested by Parallel Networks in
3 this case?

4 MR. CAMPBELL: He did.

5 THE COURT: Okay. So it sounds
6 like your expert and the other side's expert
7 both testified in accordance with the claim
8 construction handed down by this Court which
9 again happens to be the claim construction at
10 this point that you asked for. Right?

11 MR. CAMPBELL: In opposition to
12 Microsoft's request to change it, yes, that's
13 correct.

14 THE COURT: So the only testimony
15 this jury has heard is testimony based on that
16 claim construction, including testimony from
17 your expert. Right?

18 MR. CAMPBELL: I'm sorry, Your
19 Honor, I did not follow that question.

20 THE COURT: The only testimony
21 this jury has heard is testimony from your
22 expert in accordance with the claim construction
23 that this Court has been operating under since
24 it first issued it at your suggestion. Right?

1 MR. CAMPBELL: Yes, Your Honor.

2 THE COURT: Right. So what you're
3 really saying is in your rebuttal case you want
4 Dr. Jones to get on and introduce a new claim
5 construction. Right?

6 MR. CAMPBELL: No, Your Honor.

7 THE COURT: You want me to give
8 the claim construction that he can then operate
9 under rebuttal?

10 MR. CAMPBELL: I don't think he
11 needs to say anything about it in rebuttal.

12 THE COURT: Then what testimony
13 would they have to deal with? If everybody's
14 testimony in the case is solely and only on the
15 claim construction we have been operating under,
16 what would the jury have as a basis on which to
17 operate under a different claim construction
18 when all the testimony has been directed to the
19 claim construction as it has been throughout the
20 case?

21 MR. CAMPBELL: The jury would have
22 the facts as to how the products work and Your
23 Honor's claim construction as a matter of law as
24 to those claim constructions which would be

1 consistent with the Federal Circuit.

2 THE COURT: That won't be from any
3 expert testimony because both experts gave
4 testimony in accordance with the earlier claim
5 construction. Right?

6 MR. CAMPBELL: I don't believe so,
7 no.

8 THE COURT: What do you got? Who
9 said anything about anything that's related to
10 this new claim construction? You had
11 Mr. Bovenkamp attempt to introduce it in
12 cross-examination, that was shut down. And you
13 got nothing else. You got nothing else, do you?

14 MR. CAMPBELL: Your Honor, what we
15 have is Dr. Long disagreeing with the Federal
16 Circuit's interpretation and scope of the
17 claims. I think that's proper and supplemental
18 claim construction is appropriate.

19 THE COURT: Anything else you
20 would like to say, Mr. Campbell?

21 MR. CAMPBELL: No, I believe
22 that's it, Your Honor. Thank you.

23 THE COURT: Okay. Well, there is
24 no lack of chutzpah here, I give you that. It's

1 denied. You got your record. If you get the
2 Federal Circuit to agree with you, I guess I'll
3 see you all back in court. But we're going to
4 court in front of the jury on the claim
5 construction that we've had since the beginning
6 of the case, suggested by you folks on the
7 Parallel Network's side of the courtroom.

8 Is there anything else we need to
9 talk about when we're together?

10 MR. CAMPBELL: There is, Your
11 Honor.

12 THE COURT: What have you got?

13 MR. CAMPBELL: Your Honor, we
14 would ask that the Court -- let me set this up a
15 little bit. The jury has had the Court's
16 preliminary instruction, they heard the
17 preliminary instruction and they --

18 THE COURT: I'm sorry, when you
19 say they have had the preliminary instructions,
20 they haven't been given a copy of the
21 preliminary instructions.

22 MR. CAMPBELL: I thought they were
23 in their binders.

24 THE COURT: No.

1 MR. CAMPBELL: So they were not
2 given a copy of the preliminary instructions. I
3 apologize Your Honor.

4 In those preliminary instructions
5 the Court referenced invalidity, part of the
6 jury's second step is determining whether the
7 patent is valid. We believe the Court should
8 provide a supplemental, should provide an
9 instruction to the jury so that they're not
10 confused that that part of the case is out of
11 the case.

12 THE COURT: Yes. That's a good
13 idea. And I think it's appropriate for the two
14 of you to sit down, both sides and say, just
15 read them this, you know, it actually shouldn't
16 take more than a sentence or two and I bet you
17 can agree on the language if you talk about it
18 and I'll be happy to provide that.

19 MR. CAMPBELL: I'm happy to give
20 it to you. We proposed three sentences, the
21 other side objected.

22 THE COURT: Just talk to them
23 first, right, see what you can work out with
24 them.

1 MR. CAMPBELL: I understand. I'm
2 saying we did. We didn't bring this up without
3 talking to them.

4 THE COURT: So you guys have
5 already talked about it, you can't agree, you
6 can't agree how to say to the jury invalidity
7 isn't in the case?

8 MS. BROOKS: Actually we would
9 agree on that, Your Honor, what you just said.
10 They are overemphasizing. What Your Honor just
11 said, invalidity is not before you, perfect.

12 THE COURT: That's all it needs to
13 say. All they need to know is the invalidity
14 reference made earlier in the case isn't in the
15 case. I'm not saying Microsoft fell to its
16 knees and said no, no, we can't make this case,
17 I'm not saying anything that remotely implies
18 it. We'll say invalidity isn't in this case.
19 If you can't agree to something as simple as
20 that -- I'll give it in your words if you can
21 come to an agreement -- that's what I'll say.
22 I'll give you another crack at it. Is that
23 okay?

24 MS. BROOKS: Thank you, Your

1 Honor.

2 THE COURT: You're still there.

3 Do you have something else?

4 MR. CAMPBELL: He apologize.

5 THE COURT: You don't need to
6 apologize. What have you got?

7 MR. CAMPBELL: Just for the
8 record, since Microsoft has rested its case, we
9 would like to make a motion as a matter of law
10 on infringement, Microsoft has raised three
11 defenses, all three of which failed as a matter
12 of law.

13 THE COURT: Hold on just a second.
14 I'm sorry to interrupt, but that reminds me of
15 something else I want to ask real quickly. In
16 the JMOL motion that was made last night, and
17 I'm taking this is a supplemental JMOL -- that's
18 okay, I'll let you do it.

19 MR. CAMPBELL: Thank you.

20 THE COURT: I had asked both sides
21 to come up with a list of things that actually
22 were in the case. I apologize, that was
23 actually in Microsoft's JMOL. Have you folks
24 had a chance to talk -- do you know what I'm

1 referencing? Remember, there were things that
2 were in the complaint, products that had been
3 accused, and claims that had been asserted and I
4 said please get together and sort that out.
5 Have you had a chance to do that yet?

6 MS. BROOKS: Apparently we
7 e-mailed them last night, but they didn't get a
8 chance to respond, so we're still waiting.

9 THE COURT: You're still working
10 that out? That would be a great thing to be
11 able to deal with before we all disperse to our
12 various corners.

13 Go ahead, Mr. Campbell.

14 MR. CAMPBELL: So we would move
15 for judgment as a matter of law on infringement.
16 Microsoft made three arguments, all three of
17 which fail as a matter of law.

18 The first is that there is not a
19 request that satisfies the claim and claim
20 terms, claim construction for request is simply
21 a message that ask for a web page. The
22 testimony has been unequivocal that we have all
23 used the pizza example, that request goes all
24 the way to the web server, response comes all

1 the way back.

2 The argument that there is some
3 sort of prosecution history estoppel is
4 incorrect under the IPR description that the
5 SWEB system is very different, so no reasonable
6 jury can find that the request limitation is not
7 satisfied.

8 The second is the intercepting,
9 the claim construction, intercepting is
10 diverting the handling request before the
11 request is processed by the HTTP server. There
12 has been -- the testimony has been that the
13 request is not processed, that request for
14 again, I'm keep using the example just because
15 it's illustrative of the pizza, there is no
16 processing of creating, getting the contents for
17 that web page until after the request is
18 diverted. So for the handling of that request
19 to create the response to that.

20 And as Your Honor noted in the
21 summary judgment ruling, it would be against the
22 preferred embodiment to apply that construction
23 in a way that doesn't allow some handling, some
24 processing of the request because that's exactly

1 what's done in the preferred embodiment.

2 And then the final argument that
3 Microsoft made is that releasing the web server,
4 again, there's no -- testimony is unequivocal
5 from everyone that cycles, microprocessor cycles
6 are freed by the application server, processing
7 this request as opposed to the web server. And
8 so for that reason the freeing the web server
9 limitation is met as well.

10 THE COURT: Okay. Thanks, Mr.
11 Campbell. Who is speaking to this on behalf of
12 Microsoft, please?

13 MS. BROOKS: I apologize, Your
14 Honor. I was totally distracted, so Ms. Hufnal
15 is going to.

16 THE COURT: Sure. That's fine.

17 MS. HUFNAL: Thank you, Your
18 Honor. I'll take the three limitations in
19 order. Request, counsel said that the pizza
20 example is undisputed. The jury has heard
21 extensive evidence about how that request is
22 interpreted and when it comes into the system it
23 is augmented, processed, handled. There was
24 extensive testimony about that yesterday. So

1 there's at a minimum an issue for the jury to
2 decide under the Court's claim construction.

3 Relatedly is the processing. The
4 jury heard at length how when the request comes
5 in it is handled and processed through the IIS
6 system, through the FrontDoor system. So
7 judgment as a matter of law is inappropriate
8 there.

9 And on the freeing, as is
10 evidenced from their filing last night, there
11 was extensive evidence about how memory is used
12 and the connection is held in IIS for each
13 request and that is not freed until the response
14 is returned.

15 THE COURT: Okay. Thanks, Ms.
16 Hufnal. Mr. Campbell, anything you want to say
17 in addition?

18 MR. CAMPBELL: No, Your Honor.

19 THE COURT: Well, your motion is
20 of record and your arguments are of record. I
21 deny it. We'll be ready to go ahead and get the
22 jury in here at 9 o'clock. You'll be ready with
23 your -- Mr. Bovenkamp, you'll put Dr. Long on,
24 is that the plan?

1 MR. BOVENKAMP: Yes, we'll be
2 ready. And yes, we'll be calling Dr. Long.

3 MS. BROOKS: Jones.

4 THE COURT: I'm sorry, I just
5 wanted to see -- just throwing it out there see
6 if you're paying attention.

7 MS. BROOKS: I don't want Dr. Long
8 to have a heart attack.

9 THE COURT: Dr. Jones, I
10 apologize. And if Dr. Jones is in room, that's
11 the second time I've done that to you, sir. I
12 apologize.

13 I did tell the jury I would give
14 them the preliminary instructions and that they
15 would have those with the final instructions, so
16 since the invalidity and this stuff is not in
17 there, can some member of each team please work
18 together and strip that out so I can hand a
19 copy, a corrected copy of that to them? If
20 you'd do that, that would be great. And I know
21 that kind of puts you on the short term because
22 I'm expecting to instruct them, depending on how
23 long arguments go and testimony goes from
24 Dr. Jones, I expect to do that this morning, all

1 right?

2 MR. CAWLEY: Your Honor, could I
3 ask one super brief question?

4 THE COURT: Sure.

5 MR. CAWLEY: Since we're on the
6 verge of closing arguments, does Your Honor
7 follow the traditional format of Plaintiffs
8 closing, Defendants closing, Plaintiffs
9 rebuttal?

10 THE COURT: Yeah. If we still had
11 invalidity in this case, they'd get to go last
12 on that. We don't. It's burden of proof, so
13 yeah, just like you said.

14 MR. CAWLEY: Thank you.

15 (Short recess.)

16 THE COURT: All right. Thanks.
17 Let's have the jury in.

18 (Jury entering the courtroom at
19 9:02 a.m.)

20 THE COURT: Thanks, ladies and
21 gentlemen. Please be seated. Thanks for being
22 here. We're ready to go.

23 Mr. Bovenkamp.

24 MR. BOVENKAMP: Yes, Your Honor.

1 The plaintiff, Parallel Networks, calls for its
2 rebuttal case, Dr. Mark Jones.

3 THE COURT: Dr. Jones, you may
4 take the stand. You remain under oath, sir.

5 Please proceed.

6 MR. BOVENKAMP: Thank you, Your
7 Honor.

8 BY MR. BOVENKAMP:

9 Q. Dr. Jones, you're back.

10 A. Yes.

11 Q. What are you here to testify about
12 this time?

13 A. I'm here to testify regarding
14 Microsoft's arguments they made for
15 noninfringement.

16 Q. I want to start at least by
17 introducing your testimony with the two boards
18 that we see here setup in the courtroom. Do you
19 see those okay?

20 A. Yes.

21 Q. Can you remind us what you did to
22 create these boards that show claim 20 and claim
23 43 colored in various weighs?

24 A. I walked through the claims

1 element by element and indicated which evidence
2 supported those claims and explained my analysis
3 and reasoning for each one of the claim
4 elements, why they're met by Microsoft's Bing
5 and MSN products.

6 Q. What did you find with regards to
7 claim 20 and claim 43 in the patents in trial?

8 A. I found that Microsoft's Bing and
9 MSN products infringe both claims 20 and 43.

10 Q. We also during your case talked
11 about some dependent claims, claims 78, 41 and
12 49; correct?

13 A. Yes.

14 Q. Did you hear anything during
15 Microsoft's case about those dependent claims at
16 least specifically with regard to the elements
17 in them?

18 A. No, there were no noninfringement
19 arguments made with respect to the additional
20 limitations of claims 41, 49 and 78.

21 Q. What does that mean to you?

22 A. That means that if claims 20 and
23 43 are infringed, that under that argument,
24 claims 41, 49 and 78 would be infringed,

1 Microsoft won't have a specific noninfringement
2 argument for those.

3 Q. I want to talk about through each
4 of the three reasons that Microsoft argued that
5 it didn't infringe the '335 and '554 patents.
6 You heard Microsoft put on its case on those?

7 A. Yes.

8 Q. So let's start with the first.
9 What did you understand was Microsoft's first
10 noninfringement argument?

11 A. This was that they have multiple
12 requests in their system. In other words, it's
13 not the same request that travels through
14 FrontDoor to their application server endpoints.

15 Q. Do you remember what the Court's
16 construction of request was? And let me put up
17 so we're all on the same page, I'll put up on
18 the document camera the Court's claim
19 construction.

20 A. A request is a message that ask
21 for a web page.

22 Q. Do you agree, Dr. Jones, that the
23 claims that are being asserted require a single
24 request?

1 A. Yes.

2 Q. Why is that?

3 A. That's because -- well, first of
4 all, that's how Mr. Lowery's system that he
5 designed worked. But the claims have a
6 requirement for a request, each one of them, and
7 then throughout the claim there is a reference
8 to said request.

9 Q. Based on the Court's claim
10 construction, what has to be asked about whether
11 something is a request or not?

12 A. Well, it has to be asked whether
13 it's based on the construction, a message that
14 ask for a web page.

15 Q. Is a message that ask for a web
16 page a specific thing?

17 A. Yes, it is. It's going to be that
18 HTTP request.

19 Q. Is there anything in particular
20 within an HTTP request that identifies what's
21 being asked for?

22 A. Yes. In this case it's going to
23 be the burden of get the resource that's being
24 asked for. For example, in that pizza example

1 in PTX-541, it's going to be the slash search
2 question mark pizza.

3 Q. And I know you're pretty familiar
4 with the evidence and the jury probably is, too,
5 by this point, but if we could put up real
6 briefly Plaintiff's Exhibit 541. This is this
7 FDv2 deep dive document?

8 A. Yes.

9 Q. If we could turn to page 12 of
10 this. What you're referring to is this search
11 question mark Q equals pizza request that's
12 shown on this page; correct?

13 A. That's correct. That's part of
14 it. And there is the get as well.

15 Q. Is there a dispute between the
16 parties, to your knowledge at least, that a
17 message asking for a web page is sent from
18 FrontDoor to the application servers?

19 A. No.

20 Q. What does Microsoft dispute?

21 A. Their position or their dispute is
22 they're saying that's a different request, that
23 the one that comes in to say FrontDoor is
24 different than the request that leaves

1 FrontDoor.

2 Q. Is it?

3 A. No, it's not a different request.
4 It's the same request and we can see that in the
5 evidence everything we have seen so far
6 indicates that in terms of the actual evidence
7 in the case.

8 Q. What happens to the message that's
9 asking for, for example, for this pizza web page
10 when it gets to the application server?

11 A. Well, when it gets to the
12 application server endpoint, it's going to
13 generate that search results, it's going to go
14 back and do the dynamic web page generation,
15 create those results and send them back as a
16 response.

17 Q. Microsoft argues that because
18 certain things are added to the request, there
19 is no infringement. Do you agree?

20 MS. BROOKS: Excuse me, Your
21 Honor. Objection. Way outside the expert
22 report. There is no discussion about get.

23 THE COURT: All right. I'll see
24 counsel at side-bar.

1 (Discussion at side-bar:)

2 THE COURT: Mr. Bovenkamp, do you
3 want to show me where you have got that in his
4 expert report?

5 MR. BOVENKAMP: Sure, one example.

6 THE COURT: I'll need you to keep
7 your voice down.

8 MR. BOVENKAMP: One example, Your
9 Honor, is his discussion of the document that is
10 up on the screen with regards to HTTP and the
11 request that gets sent out. And to Your Honor's
12 point, is the word --

13 THE COURT: I don't have a point,
14 I'm asking, my question is based on the
15 objection, does he ever in his report talk about
16 this, is the word get, get does this, it is part
17 of the TCP protocol, it does X, Y, Z, is that in
18 there, because if it's not, move on.

19 MR. BOVENKAMP: I'm not going to
20 intend to ask him anymore questions. And the
21 question that was pending doesn't have anything
22 to do with the get. But to answer Your Honor's
23 question, there is no specific reference to get
24 in the expert report.

1 THE COURT: If it's not in there,
2 don't ask about it. Stick with what's in his
3 expert report that you can legitimately use on
4 rebuttal based on what Dr. Long or somebody else
5 said.

6 MR. BOVENKAMP: Understood, Your
7 Honor.

8 THE COURT: Thanks.
9 (End of side-bar.)

10 THE COURT: Okay. Thanks, Mr.
11 Bovenkamp. You may proceed, please.

12 BY MR. BOVENKAMP:

13 Q. We were talking, Mr. -- or
14 Dr. Jones, about the cooked versus raw issue,
15 correct?

16 A. Yes.

17 Q. Okay. And you heard the testimony
18 with regards to Microsoft that because something
19 was added to that, that that changed the
20 request, correct?

21 A. Yes, I heard that.

22 Q. Do you agree with that?

23 A. The request is still the same
24 request that enters. In other words, it's still

1 the same request that we see here up on the
2 screen. It's still the same request when it
3 moves through FrontDoor.

4 Q. Just because you cook a potato --

5 MS. BROOKS: Excuse me, Your
6 Honor.

7 THE COURT: Overruled. Go ahead.
8 You can ask that question.

9 BY MR. BOVENKAMP:

10 Q. Just because you cook a raw potato
11 doesn't change it?

12 A. No, it's still a potato at that
13 point. Just like in this case if I create
14 what's called a structured version, I think it's
15 called, has been referred to as a semantically
16 equivalent version of it that's been referred
17 to, it's still the same request that's passing
18 through.

19 Q. Let me shift gears. During
20 testimony of Dr. Long yesterday, which you were
21 here for, correct?

22 A. Yes.

23 Q. There was a discussion of some
24 affirmative statements made by Parallel Networks

1 in some documents that were put up on the
2 screen. Do you remember those?

3 A. Yes, I do.

4 Q. Okay. And that included reference
5 to something called SWeb. Do you remember that?

6 A. Yes.

7 THE COURT: Hold on.

8 MS. BROOKS: Hold on. No mention
9 of this at all in his expert report.

10 THE COURT: All right. I'll see
11 counsel at side bar.

12 (Side bar discussion.)

13 MR. BOVENKAMP: Your Honor, I'm
14 showing you a page from the rebuttal report of
15 Dr. Jones. Title of this page starts SWeb. I
16 intend to ask Dr. Jones about Figure 6.

17 THE COURT: I thought I had heard
18 there was no rebuttal report, but maybe I
19 misheard that.

20 MR. WOLFF: There was no rebuttal
21 and that was the IPR -- Microsoft asked for --

22 MS. BROOKS: Judge Robinson.

23 MR. WOLFF: Judge Robinson. I'm
24 talking about the 2016 after the IPRs. You were

1 asking about the IPRs. There's no discussion
2 about the IPR in his report. There's no
3 discussion in the rebuttal report.

4 THE COURT: You have to speak to
5 me.

6 MR. WOLFF: Microsoft asked for
7 leave to submit. We had an order for leave to
8 submit supplemental reports. There's no
9 supplemental report by Dr. Jones addressing the
10 IPRs.

11 MR. BOVENKAMP: And Your Honor --

12 THE COURT: You can't talk to him.
13 You got to talk to me. It's just that simple.
14 Okay.

15 MS. BROOKS: He's learning, Your
16 Honor.

17 THE COURT: Okay.

18 MR. BOVENKAMP: I'm not talking
19 about IPRs.

20 THE COURT: I know you're not
21 talking about IPRs, but I'm finding out was
22 there a rebuttal report submitted in this case,
23 because if a rebuttal report was submitted in
24 this case, then everybody had notice. I'm being

1 told, no, it wasn't. Now I'm looking at
2 something that says rebuttal expert report Mark
3 Jones. Was there a rebuttal report submitted in
4 this case or not?

5 MS. BROOKS: Only on invalidity,
6 Your Honor, not on infringement. So in other
7 words -- there was the traditional exchange. We
8 went with invalidity first and then Dr. Jones
9 rebutted that invalidity report. No
10 infringement rebuttal report was ever filed.

11 THE COURT: Oh, okay. But this
12 report was in --

13 MR. BOVENKAMP: Yes, Your Honor.

14 THE COURT: -- in this case.

15 MR. BOVENKAMP: Yes, Your Honor.

16 THE COURT: Hmm. Well, that's a
17 little bit -- a little bit of a challenge, isn't
18 it? Well, here's what I'm going to do, because
19 Microsoft chose to get into this with Dr. Long
20 pretty specifically and because you had notice
21 at least of their position, albeit in an
22 invalidity report, I'll let him ask some
23 questions about it, limited to what they ask
24 about, which was very specific. Now, I told

1 them to stay away from SWeb, but if you get into
2 this in your questioning, then those
3 instructions I gave yesterday about don't get
4 into it in closing, that's off the table. You
5 put it back on the table, it's on the table. In
6 other words, I've tried to keep the inter partes
7 stuff down to just the barest minimum that what
8 I thought was essential and fair given the what
9 are in effect judicial admissions and otherwise
10 keep it out of the case. I let you get into it
11 a little bit yesterday in your cross-examination
12 based on how far they went and I thought I've
13 been pretty clear about, you know, you ought to
14 be treading carefully. Now, given how far she
15 went, she being Ms. Brooks, I'll let you ask the
16 question I heard being asked, which was about
17 SWeb. But I'm telling you, you are marching
18 down this road and then I'm going to --
19 everything that got talked about, but only that
20 which was talked about in Court, is fair game
21 talking about in closing. Understand what I'm
22 trying to say?

23 MR. BOVENKAMP: I think so, Your
24 Honor. So I would request so we're not up here

1 again and waste more of the jury's time, I
2 intend very briefly to have Dr. Jones explain
3 exactly how the multiple requests occur and
4 that's it.

5 THE COURT: Yeah. No. That's
6 fine. Thank you. Thanks for clarifying.
7 That's what I'm telling you, they got into
8 single request, you can get into that since it's
9 in that report. They had notice of it, we're
10 done.

11 (Side bar discussion ends.)

12 THE COURT: Okay. Ladies and
13 gentlemen, just want to say something real
14 quick. Counsel have been trying hard to make
15 sure that we don't have disputes, we could
16 handle them outside your presence and we have a
17 minimum of these interruptions where you sit
18 while we chat, where it's not the most efficient
19 use of your time, but even in the best of
20 circumstances sometimes these things pop up when
21 we can't just march you out, bring you back.
22 That would be even more disruptive. Thanks for
23 your patience. I think we're on the same page
24 now. Mr. Bovenkamp, you may proceed.

1 MR. BOVENKAMP: Let me reorient
2 us.

3 BY MR. BOVENKAMP:

4 Q. I asked you if you heard some
5 testimony with regards to some affirmative
6 statements Parallel Networks made about SWeb
7 during Dr. Long's testimony. Did you hear that?

8 A. Yes.

9 Q. Okay. Are you familiar with the
10 SWeb reference?

11 A. Yes, I am.

12 Q. And I just want to ask you about
13 one statement that Dr. Long made. Do you
14 remember Dr. Long saying that Parallel Networks
15 said, thus while the '554 Patent involves a
16 single request, SWeb 95 requires multiple
17 requests from the web client for a single
18 dynamic web page? Do you remember testimony to
19 that effect?

20 A. Yes, I do.

21 Q. What I want to ask you to do and
22 I'll try to follow along and draw is if you
23 could describe for me how SWeb works. Before I
24 do that, first of all, do you agree that SWeb

1 sends multiple requests?

2 A. Yes, I do.

3 Q. Okay. Let's go through and you
4 tell me what to draw and I will draw what SWeb
5 does.

6 A. LET'S start with a client
7 computer, which would be something with a
8 browser on it. And then draw a server, a web
9 server on the other side.

10 Q. Okay.

11 A. In that case in SWeb 95 the client
12 will send a request for a web page to the web
13 server and the web server will return a response
14 to that and that response says essentially go
15 get the web page somewhere else. Then draw
16 another web server and at that point if the
17 client chooses to, the client will send another
18 request to the web server and that web server
19 will also respond to the client to that request.

20 Q. And so just to clarify, I think
21 it's clear, in SWeb client sends one request to
22 a web server, correct?

23 A. Yes.

24 Q. That web server decides not to

1 respond with a web page, right?

2 A. Right. Well, with that web page,
3 it responds with a web page. It doesn't respond
4 with a web page that that web server -- it
5 doesn't respond with a web page with content.

6 Q. It's not the requested web page?

7 A. That's right.

8 Q. Instead it sends back an
9 instruction for the client to a -- send a second
10 request?

11 A. If the client chooses to, it's a
12 recommendation.

13 Q. Does Bing and MSN work like SWEB?

14 A. No, not at all. It's a completely
15 different architecture, but it's also an
16 architecture with one request from the client
17 for a web page.

18 Q. Let's go to the second
19 noninfringement argument. Do you remember what
20 that was?

21 A. Yes. This is an argument where
22 Microsoft says they don't do the intercepting
23 step.

24 Q. And before we get to your views on

1 that, I want to show you a couple of things.

2 First is from your expert report on Exhibit A,
3 page 12. Do you recognize that?

4 A. Yes. That's the Microsoft or one
5 of the expert's at Microsoft documents that I
6 discussed in the report. This one is, I believe
7 it's DDX-205 that's been discussed at trial.

8 Q. Is there anything you want to say
9 about the figure, the image that's shown on the
10 screen?

11 A. Well, in my discussion of this,
12 we'll also see in other pages where I indicate
13 what the various steps of it are. When you look
14 at this, you can see the clear diverting of the
15 handling that's occurring in this figure just as
16 I discussed earlier a couple of days ago during
17 my direct testimony.

18 Q. Where specifically is there an
19 example of diverting that that occurs in this
20 figure?

21 A. That happens during -- when it
22 becomes time to execute the handler or the
23 module, in the case of FrontDoor version 2,
24 that's when it begins to execute the FrontDoor

1 version 2 module.

2 Q. Is that the fork in the road, so
3 to speak?

4 A. Exactly.

5 Q. So another page from your expert
6 report, this is page 14 from Exhibit A of your
7 expert report.

8 A. Yes, we look at the bottom, that's
9 describing some of the steps in the IIS
10 pipeline, again, from another Microsoft document
11 that is describing what the various steps do.
12 And when we're looking at them you see that none
13 of those steps are the dynamic web page
14 generation, these are handling the request, and
15 eventually it will come time to execute the
16 handler for a request that is for a dynamically
17 generated web page.

18 Q. You, like the other experts in
19 this case, had to prepare these reports; right?

20 A. Yes.

21 Q. Did you include everything in your
22 report in the testimony that you presented
23 during the case in chief?

24 A. No. Many, many pages in here and

1 many documents, so no, when I'm describing
2 things in direct testimony, I'm describing
3 particular elements of evidence that I think
4 give good examples of my analysis.

5 Q. So let's go to your analysis of
6 intercepting. Let me put back up on the screen
7 the Court's claim constructions. Where do we
8 need to start?

9 A. We start with the claims and the
10 claim element. In this case we have got a
11 construction for intercepting said request at
12 web server or at the HTTP-compliant device, and
13 that means diverting the handling of said
14 request before the request is processed by the
15 web server or in the case of claim 43 the
16 HTTP-compliant device.

17 Q. Before we get to the specifics of
18 what your proof is connected with this
19 limitation, remind us what this intercepting
20 term relates to?

21 A. Well, this relates to the idea in
22 the invention that instead of doing all of the
23 processing for the customers, instead of
24 generating the web pages at a single web server,

1 the dynamic generation of the web pages can be
2 off-loaded to the page servers so that the web
3 server can handle more requests so it doesn't
4 get overloaded.

5 Q. Can we bring up Plaintiff's
6 Exhibit 6, which is the '554 patent. And let's
7 turn to figure 2. Is this some of the prior art
8 that was discussed in the patent?

9 A. Yes, this is describing
10 essentially the old way of doing things before
11 the invention, and what we see here are web
12 servers and those web servers actually there
13 directly generate or locate the web pages and
14 return them to the web client. This is the old
15 architecture with web servers at the same level.

16 Q. What was wrong with doing all of
17 the web server executable, the web page, and
18 everything that goes along with that on the web
19 server?

20 A. As we'll see in the specification,
21 it will create too much load on that web server.
22 That web server can only handle so many
23 requests.

24 Q. If we go to column four of the

1 patent, and look at lines 38 through 41. What
2 is said in this portion of the specification?

3 A. Well, this is indicating that a
4 large website could receive thousands of
5 requests or hits in a single day. This is back
6 in 1996, '95 time frame. And this indicates
7 that current web servers process each of these
8 requests on a single machine, namely the web
9 server machine, and then it will go on to
10 explain this is a disadvantage because it's
11 going to put a huge load on that one web server.

12 Q. What was Mr. Lowery's solution?

13 A. His solution was to divert
14 requests to page servers or off-load the request
15 to page servers that would do the work of
16 dynamic generating the web page.

17 Q. Microsoft agrees, if I understand
18 their testimony of their witnesses correctly,
19 that handling can occur before interception;
20 correct?

21 A. That's my understanding, yes.

22 Q. What can't occur before
23 interception?

24 A. You can't generate, dynamically

1 generate the web page before the interception.

2 Q. What occurs in Bing and MSN?

3 A. In Bing and MSN, it's intercepted,
4 the request, then it's forwarded on to the
5 application server endpoints. That's that big
6 diagram we saw in PTX-763 where the work of
7 dynamically generating the web page is done.
8 And, in fact, that's far more work than it would
9 be to simply divert the handling of the request.

10 Q. Do you remember, Dr. Jones, my
11 discussion with Dr. Long about whether the claim
12 construction of the Court required significant
13 amounts of handling, or significant amounts of
14 processing, do you remember that?

15 A. I do.

16 Q. Is there any requirement in the
17 Court's claim construction relating to the
18 amount of handling that can occur before the
19 request is diverted?

20 A. No, it's just a plain language is
21 diverting the handling of said requests before
22 the request is processed.

23 Q. So even if Microsoft shows that
24 there is significant amounts of handling that

1 occurs before the diversion, does that matter?

2 A. No, the handling is diverted and
3 the purpose of the diverting is so that it can
4 be dynamically generated on a page server which
5 will release the web server to handle other
6 requests.

7 Q. So we have gone through number one
8 noninfringement argument relating to the request
9 limitation; correct?

10 A. Yes.

11 Q. We have gone through now number
12 two noninfringement argument relating to the
13 intercepting limitation; correct?

14 A. Yes.

15 Q. Is there a third?

16 A. Yes. The one related to
17 releasing.

18 Q. Am I correct that what Microsoft
19 argues is it does not release the HTTP-compliant
20 device or web server to process other requests?

21 A. Yes.

22 Q. Where do we need to start to
23 determine whether or not that's true?

24 A. Well, start with the claim

1 construction from the claim at the bottom of
2 this, or element the bottom of the page which
3 says freeing the web server to process other
4 requests.

5 Q. And so in order to determine what
6 it means to free a web server, or what it means
7 to free a HTTP-compliant device, what should we
8 look at?

9 A. We can look at the operation of
10 the system. We can look at the construction of
11 web server. We can also look at what an
12 HTTP-compliant device is. So in other words,
13 what we're freeing is either the web server to
14 process the other requests or the HTTP-compliant
15 device to process other requests, so we need to
16 look at those two constructions.

17 Q. The Court's construction, let's
18 take those two in turn. I want to focus on the
19 part of the web server and the HTTP-compliant
20 device because that's what's being freed; right?

21 A. That's correct.

22 Q. For the web server, that can be
23 software; right?

24 A. Yes.

1 Q. And for a web server it can also
2 be a machine having software; correct?

3 A. That's correct.

4 Q. And for an HTTP-compliant device,
5 it's a device; right?

6 A. Yes.

7 Q. Another word for machine?

8 A. Yes.

9 Q. And that machine is running
10 software; right?

11 A. That's correct.

12 Q. What is the significance with
13 regard to freeing of it being a device versus
14 software?

15 A. Well, in the case of a device,
16 we're talking about hardware, so we can be
17 freeing hardware resources. We can also refer
18 to software resources. So in both cases for
19 what's being accused, it's going to be the
20 computer running FrontDoor in version 1 or 2,
21 along with the software on that computer, so it
22 can be freeing hardware resources or software
23 resources.

24 Q. Let's focus on the computer

1 because I think that's what you're accusing of
2 infringing the claims in this case; right?

3 A. That's correct. And what I
4 identified as being freed are the CPU or
5 processor cycles. If the CPU is being freed to
6 process other requests because that CPU does not
7 have to spend its time on the very costly, from
8 a CPU point of view, time associated with
9 generating a dynamic web page.

10 Q. Okay. Is there any dispute that
11 sending the request to the page server frees
12 processor cycles on FrontDoor web server?

13 A. No, there is no dispute on that.

14 Q. What effect does the dynamic
15 processing of web pages have on a processor?

16 A. It takes a lot of processor time.
17 In other words, you think of the processor as
18 the brains of the computer. It takes lots of
19 processor time to generate a dynamic web page,
20 and so instead of having say FrontDoor do that,
21 it's handed off to this back end where there are
22 many more computers to handle that request, that
23 frees FrontDoor to handle new incoming requests.

24 Q. So that concludes your rebuttal of

1 the third noninfringement argument that
2 Microsoft made; is that correct?

3 A. That's correct.

4 Q. We have gone through their first,
5 second and third noninfringing points. What is
6 your conclusion, what are you telling the jury
7 today?

8 A. My conclusion remains the same,
9 that claims 20, 43, 78, 41 and 49 are all
10 infringed by Bing and MSN.

11 MR. BOVENKAMP: Pass the witness,
12 Your Honor.

13 THE COURT: Thank you.

14 Ms. Brooks.

15 MS. BROOKS: Yes, thank you, Your
16 Honor.

17 CROSS-EXAMINATION

18 BY MS. BROOKS:

19 Q. Dr. Jones, you're back here
20 because Parallel Networks has the burden of
21 proof in this case; is that right?

22 A. That's my understanding.

23 Q. And so as the plaintiff with the
24 burden of proof, they get the last word on the

1 subject; is that right?

2 A. That's my understanding, yes.

3 Q. All right. Now, just to be clear,
4 you're the same Dr. Jones who testified earlier
5 in the case; right?

6 A. Yes.

7 Q. And the same gentleman that has
8 worked five times, all for plaintiffs, for this
9 law firm of McKool Smith; is that right?

10 A. I have worked for defendants for
11 them as well.

12 Q. Oh, really?

13 A. Yes.

14 Q. Okay. I thought you told us the
15 first time you were here that it was all for
16 Plaintiffs?

17 A. At trial, but I've worked for
18 defendants at well.

19 Q. Okay. Thank You. So let's be
20 specific here. At trial on multiple occasions
21 you sat before a jury like this jury and said
22 that there was infringement and you said it on
23 behalf of the same law firm, right?

24 A. Yes.

1 Q. All right. Now, in this case
2 there's been a lot of talk about expert reports
3 and you know the purpose of expert reports,
4 don't you, sir?

5 A. Yes.

6 Q. That's to give the party, both
7 parties, especially the opposing party notice of
8 what you're going to say, right?

9 A. Yes.

10 Q. So we're not surprised by it, is
11 that fair?

12 A. That's fair.

13 Q. Now, in this case, because
14 Parallel Networks has the burden of proof, you
15 filed the first report on infringement, did you
16 not?

17 A. Yes.

18 Q. And then Dr. Long filed a
19 non-infringement report, correct?

20 A. Yes.

21 Q. And you received that report, did
22 you not, sir?

23 A. Yes.

24 Q. And you reviewed it, correct?

1 A. Yes.

2 Q. And you were free to file a
3 rebuttal report to Dr. Long's non-infringement
4 report, weren't you, sir?

5 A. I may have been. I don't know one
6 way or the other.

7 Q. But you didn't, did you?

8 A. No.

9 Q. So the first time that we get to
10 hear what you had to say in rebuttal to
11 Dr. Long's report is today from the witness
12 stand; is that right?

13 A. No.

14 Q. Well, you never filed a report on
15 it, did you, sir?

16 A. That's correct.

17 Q. Now, you mentioned -- well, just
18 tick off everything very quickly if we could.
19 You said that Microsoft made no arguments
20 regarding non-infringement as to the dependent
21 claims, starting with the '554 Patent, Claims 41
22 and 49. Do you remember saying that, sir?

23 A. I -- to that effect, yes. What I
24 said was no argument specific to those

1 limitations.

2 Q. But you understand, sir, that the
3 law says if there's no infringement of the
4 independent claims, as a matter of law, one does
5 not infringe the dependent claims, correct?

6 A. Absolutely.

7 Q. So that would apply to Claims 41
8 and 49 of the '554, correct?

9 A. Yes.

10 Q. And it would apply to dependent
11 Claim 78 of the '335, correct?

12 A. Yes.

13 Q. You said that in rebuttal you
14 believe that the claims do require a single
15 request. Did I hear that right, sir?

16 A. Yes.

17 Q. You concede that?

18 A. I said that all along.

19 Q. And you were here in court when
20 Mr. Alam, who worked for years on the IIS
21 Pipeline, he and his team worked for years, was
22 asked, so at this point in -- point in the
23 client transaction, and we were talking about
24 the request in the Pipeline, do you have a

1 single request going on or do you have multiple
2 requests? His answer was, we clearly have
3 multiple requests. You heard him say that under
4 oath from the witness stand, correct, sir?

5 A. Yes.

6 Q. And then you were here when
7 Dr. David Maltz testified, correct?

8 A. I was.

9 Q. And you heard Dr. Maltz, how he
10 and his team who did FrontDoor version 1 and
11 FrontDoor version 2, which are part of the
12 structure of Microsoft and Bing, he was asked
13 this question, and the request that comes out of
14 FrontDoor version 2 -- is the request that comes
15 out of FrontDoor version 2 the same as the
16 request that came into FrontDoor version 2?
17 Answer, no, it is not. Question, and you can
18 tell that just by comparing pages 26 and 27 of
19 DX 139? And his answer was yes, I can.
20 Correct, sir?

21 A. Yes.

22 Q. Now, let's move on to your
23 argument about intercepting. You said you
24 followed the Court's claim construction on

1 intercepting and the Court's constructions --
2 let's put it in the context of the language in
3 the claim. It says intercepting said request at
4 said web server, routing said request from said
5 web server to a dispatcher. Do I read that
6 right, sir?

7 A. Yes.

8 Q. That's the claim term. And the
9 definition is that means to divert the handling
10 of the request before the request is processed
11 by the web server or the HTTP-compliant device,
12 correct?

13 A. Yes.

14 Q. And in the case of intercepting,
15 sir, I asked you, in the IIS Pipeline what the
16 map handler did, and that's before it was
17 intercepted, the request was intercepted, right,
18 and you didn't know, correct?

19 A. That's right, yes.

20 Q. And then I asked you what the
21 pre-execute handler in the Pipeline, the IIS
22 Pipeline did, and that's before the request was
23 intercepted and you said you didn't know,
24 correct?

1 A. That's correct.

2 Q. And the word, they have the word
3 handler in their module, correct?

4 A. Yes.

5 Q. And the Court's construction says
6 that you have to divert the request before it's
7 handled, correct?

8 A. No. That's not what it says at
9 all.

10 Q. I'm sorry. I thought it said
11 diverting the handling of said request before --
12 does the word before appear in the Court's
13 construction?

14 A. Absolutely.

15 Q. Before the request is processed by
16 the web server slash HTTP-compliant device. Is
17 that the Court's construction, sir?

18 A. Yes.

19 Q. And you heard Dr. Alam talk about
20 all the handling that went on, even though you
21 didn't know what the handlers did, you heard him
22 talk at length about all of the handling of the
23 requests that went on and the processing of the
24 requests that went on in the IIS Pipeline before

1 that request was diverted, did you not, sir?

2 A. Yes.

3 Q. And you heard Dr. Maltz talk about
4 all of the handling and processing of the
5 request that was -- that went on in FrontDoor
6 version 1 and 2 before that request was
7 diverted, correct, sir?

8 A. Yes.

9 Q. And lastly, let's talk about
10 releasing. So releasing talks about releasing
11 the web server to process another request,
12 correct?

13 A. Yes.

14 Q. And the way that occurs in the
15 claim is that the page server receives the
16 request. So now the request has gotten all the
17 way to the page server and once that happens
18 releasing said web server to process another
19 request; is that right, sir?

20 A. Yes.

21 Q. And you were here again when Mr.
22 Alam testified?

23 MR. BOVENKAMP: Objection, Your
24 Honor. Argument in this slide.

1 THE COURT: Just a moment.

2 MS. BROOKS: Let me take off the
3 title. There we go. This is for closing, so
4 I'll keep it non argumentative for now.

5 BY MS. BROOKS:

6 Q. So you were here when Mr. Alam
7 testified that that first request that came in,
8 what he called the original raw request, that it
9 stayed at HTTP.sys, correct?

10 A. Yes.

11 Q. And you were also here when he
12 testified that that second request, what he
13 called the cooked request, stayed at the execute
14 handler, correct?

15 A. Yes.

16 Q. And he said that it was not freed
17 from the execute handler until the response --
18 it meaning that part of the web server, was not
19 free to process another request until the
20 response had been received to free up that
21 memory and make it available again, correct,
22 sir?

23 A. I don't think that's a correct
24 interpretation of what he said, no.

1 Q. He said what the ladies and
2 gentlemen can see on the screen, correct, sir?

3 A. Yes.

4 Q. And you, sir, were also asked this
5 series of questions and answers. Question, and
6 while it, meaning the request, is sitting in the
7 execute handler, it is actually taking up
8 memory, correct? And you said correct?

9 A. Yes.

10 Q. And so the memory is not released
11 or freed until after the response comes back,
12 correct? And you answered correct?

13 A. Yes.

14 Q. And as a result of that, is it
15 true, sir, that that memory or a resource that
16 is being held up or taken up until the client
17 transaction is fully processed and the response
18 comes back? And your answer was yes, correct,
19 sir?

20 A. Yes.

21 Q. Now, lastly, sir, if the jury
22 decides they agree with you, it's a single
23 request, but that there is no releasing, is
24 there still no infringement?

1 A. That's correct.

2 Q. If the jury decides they agree
3 with you that it's a single request and there is
4 releasing, but there's no intercepting, is there
5 still no infringement?

6 A. That's correct.

7 Q. And so in other words, we don't
8 have to show that there are three limitations
9 that are not met in the accused products, all we
10 have to show is that just one limitation is not
11 met for there to be no infringement; is that
12 right, sir?

13 A. Yeah.

14 MS. BROOKS: Thank you. No
15 further questions, Your Honor.

16 THE COURT: All right. Any
17 redirect, Mr. Bovenkamp?

18 MR. BOVENKAMP: Briefly, Your
19 Honor.

20 BY MR. BOVENKAMP:

21 Q. How many limitations for Claim 20
22 have you shown are met?

23 A. Each and every limitation.

24 Q. How many limitations of Claim 43

1 have you shown are met?

2 A. Each and every limitation.

3 Q. You were asked about not knowing
4 certain things about some of the handlers
5 letters in the IIS Pipeline. Why is that?

6 A. Well, I certainly covered them in
7 my report, but those handlers are not
8 dynamically generated at the web page. What
9 happens is the handling gets diverted and that
10 handling, the specifics of it don't matter, it's
11 being diverted to the page server for the
12 dynamic generation of the web page.

13 Q. Even if Mr. Alam is correct about
14 memory being held, even if Microsoft's counsel
15 is correct in her characterization of your
16 testimony with regards to memory being held,
17 does that matter?

18 A. No. The web server, just because
19 a connection is held, Mr. Long says that even if
20 a connection is held, the web server is still
21 free to process other requests. What's being
22 freed is the hardware resources. Any web server
23 is going to hold the connection to the client.
24 That's true for web servers back in the early

1 1990s through today. What's being freed in this
2 architecture in these claims and in the
3 Microsoft Bing and MSN systems is the processor,
4 the processor is being freed up of the load,
5 which the vast majority of the load is
6 generating a dynamic web page. That's
7 happening at the page server, so we have a page
8 server end point freeing up the web server or
9 the computer with FrontDoor on it to process
10 other requests.

11 MR. BOVENKAMP: Thank you,
12 Dr. Jones. I have no further questions.

13 THE COURT: All right. Thank you
14 Dr. Jones. You can step down. Mr. Cawley or
15 Mr. Bovenkamp, any other witnesses?

16 MR. BOVENKAMP: Your Honor, we
17 have no other witnesses to call. We rest.

18 THE COURT: All right. As I
19 mentioned to you before, ladies and gentlemen of
20 the jury, those words have legal significance
21 and I have to talk to the lawyers now for a few
22 minutes. So we'll go ahead and ask you to step
23 out. Bring you right back in as soon as we can.
24 Thanks.

1 (Jury exits.)

2 THE COURT: Okay. Please be
3 seated.

4 Any applications?

5 MS. BROOKS: Your Honor, we would
6 once again renew our motion for judgment as a
7 matter of law on the same grounds that we made
8 at the end of plaintiff's case and the end of
9 our case.

10 THE COURT: All right. I presume
11 the arguments in rebuttal would be the same.

12 MR. BOVENKAMP: The arguments in
13 rebuttal are the same.

14 THE COURT: All right. Everyone
15 has made their record. The motion is denied.

16 MR. BOVENKAMP: We would also
17 urge, for the same reasons that Mr. Campbell
18 expressed, our motions with regard to judgment
19 as a matter of law.

20 THE COURT: I presume the rebuttal
21 would be the same on that front?

22 MS. BROOKS: Yes, Your Honor.

23 THE COURT: Everybody has made
24 their record. The motion is denied.

1 Okay. Housekeeping. What do we
2 need to do before we, if anything, before we're
3 ready to get going with closings, because my
4 intention is to sort of run it straight through
5 if we can, depending on how long things take.

6 Mr. Cawley.

7 MR. CAWLEY: We have to set up a
8 separate monitor here, Your Honor. That will
9 take about two minutes. That's the only
10 mechanical thing we need to do.

11 I would estimate for the Court's
12 timing purposes, the total of our first session
13 of closing and our rebuttal of closing is
14 probably forty-five to fifty minutes.

15 THE COURT: That's good, because
16 based on your timing today, you're pretty close.
17 I appreciate that estimate. I think it will be
18 okay to stay within that.

19 Ms. Brooks.

20 MS. BROOKS: We have I think -- we
21 probably have about seven hours in, so we
22 probably have two hours. The good news, Your
23 Honor, I'll be surprised if I go an hour. I
24 would say at least an hour, though.

1 THE COURT: All right. Then the
2 only thing I think I need from you folks is, at
3 some point I had asked for the corrected
4 preliminary instructions. I see Ms. Fiorelli
5 for Microsoft nodding, Mr. Campbell is nodding
6 his head on the Parallel Networks side.

7 If I could ask you folks to do
8 this for me, to produce the copy that you're
9 comfortable with, I'm just going to send one
10 copy of both the preliminary and the final
11 instructions back to the jury when I'm done, so
12 if you will produce for me what based on the
13 rulings we have had, what you both sides are
14 comfortable, that's the right copy, that's the
15 clean copy of both, that's what I'll make sure
16 that the courtroom deputy hands to them when I
17 finish. Okay?

18 And just for everybody's
19 information, when I instruct the jury, I close
20 the courtroom. This doesn't mean I throw people
21 out, it means if you want to leave, you leave
22 before I start the instructions, because once I
23 start, nobody is coming in and nobody is going
24 out.

1 Okay. Thanks very much. If I
2 give you folks ten minutes, is that going to be
3 sufficient?

4 MR. CAWLEY: Yes, Your Honor.
5 Thank you.

6 MS. BROOKS: Thank you.

7 THE COURT: I'll see you back here
8 in ten.

9 (A brief recess was taken.)

10 THE COURT: Thanks. Be seated.

11 Mr. Cawley, are you ready?

12 MR. CAWLEY: Yes, Your Honor.

13 THE COURT: All right. Go ahead
14 and we'll have the jury in.

15 Counsel, may I ask you a question.
16 The only difference in the jury instructions,
17 the two versions that we were dealing with this
18 morning was the inclusion of the different claim
19 construction, am I right about that,
20 Mr. Campbell?

21 MR. CAMPBELL: I believe that is
22 correct, Your Honor.

23 THE COURT: Thanks.

24 Ms. Hufnal?

1 MS. HUFNAL: Yes.

2 THE COURT: Okay.

3 (Jury entering the courtroom at
4 10:00 a.m.)

5 THE COURT: Let's be seated.

6 Ladies and gentlemen of the jury, both sides
7 have had an opportunity to present their
8 evidence, both sides have represented. Let me
9 give you a quick overview of what's going to
10 happen now.

11 We have reached the point where
12 there will be closing arguments. Because the
13 plaintiff, Parallel Networks, has the burden of
14 proof, they'll have an opportunity to speak
15 first, and the opportunity to speak last. And
16 in between, Microsoft will have the opportunity
17 to present its closing argument.

18 When the arguments are done,
19 depending on how long they take, we'll take just
20 a really short break, because the expectation
21 from speaking with the lawyers, and everybody is
22 trying to be as efficient as possible with your
23 time, but it will probably take both arguments
24 together all said and done approximately two

1 hours, maybe a little less, maybe a little more,
2 but everybody is ballparking here.

3 Take a short break, and then I
4 will instruct you on the law, and then the case
5 will be yours.

6 This isn't really the most
7 generous offer you'll ever hear, but we're going
8 to give you lunch for your several days here.
9 But we'll have lunch ready for you so that
10 you'll be able to -- you won't need to go out
11 while you're deliberating. And that's how
12 things will proceed from this point. Okay?

13 So, without further adeo,
14 Mr. Cawley, your closing.

15 MR. CAWLEY: Thank you, Your
16 Honor.

17 This is a case of a man who
18 invented a way to help the internet work better.
19 He got a patent on his invention, and Microsoft
20 uses those patents without permission and
21 refuses to pay fair value.

22 Three days ago you met Mr. Keith
23 Lowery. You learned about how Mr. Lowery came
24 through a series of unfortunate accidents to

1 discover that he had a natural talent for
2 programing computers. He used that talent over
3 the next ten years or so to get better and
4 better jobs and contribute more and more to the
5 field of computer networking.

6 It's interesting, and you may have
7 noticed it that of all of the people you heard
8 testify in this trial, all of the computer
9 scientists, all of the people who were experts,
10 Mr. Lowery is the only one who doesn't have a
11 formal education.

12 And you may wonder, as well as I
13 have over the time that I have known him, I
14 wonder if it was really his lack of formal
15 education that enabled him to see ideas and
16 solutions to problems that the so-called experts
17 in the field who had the Ph.D.s and had the
18 master degrees didn't see, at least not as early
19 as Mr. Lowery did.

20 You heard him explain when he
21 stepped down to the whiteboard and built this
22 high-level diagram what he saw when he
23 downloaded in his home office back in the early
24 '90s the specification for how the internet

1 works. And remember he said that he did a
2 little experiment himself, just a single web
3 page that when it was delivered would say Hello
4 World, but once he got it to work and saw Hello
5 World, he was confident that his reading had put
6 him in a position to understand how the internet
7 worked. And he as a result of some companies
8 raising large amounts of money in the stock
9 market based on their internet presence, he
10 changed his initial skepticism and came to
11 believe that there would be a huge future for
12 doing business on the internet.

13 But you'll remember that almost as
14 soon as he finished the little experiment in his
15 home office, he saw a problem. And the problem
16 was here in the web server. Remember he
17 explained that the way the internet worked was
18 that the web client, like a computer in
19 someone's home, would make a request to the web
20 server and the web server would find the right
21 page and send it back.

22 You'll also remember him
23 testifying, though, that this put tremendous
24 demands on the web server. It wasn't that bad

1 in the mid '90s when there was only a handful of
2 people on the internet, but the future that
3 Mr. Lowery saw is it wouldn't be a few people,
4 it would be thousands and even for some websites
5 millions of people all making demands on the web
6 server.

7 So he conceived of the idea of
8 instead of relying for all of that work to be
9 done here, to assemble a whole network of
10 smaller computers that he called the page server
11 to handle the load.

12 But that wasn't a complete
13 solution. Because as this network of smaller
14 computers grew to more and more, then the
15 likelihood that some of those computers would be
16 down, broken, have other technical problems
17 would get greater and greater, and there would
18 be a lot of inefficiency from not knowing what
19 was going on with these computers and not
20 knowing which one of them could most efficiently
21 handle requests from the web server. So the
22 next part of the invention was to create what he
23 called a dispatcher, the brain of his system.

24 The way it would work then would

1 be that the web client would send the request to
2 the web server, the dispatcher would know what
3 was going on in terms of who was -- which one of
4 these computers was online, who was busy, who
5 was broken, who had time available, then the
6 dispatcher would send the request to the page
7 server that could most efficiently handle it,
8 and the page server if it needed to go outside
9 to get a data source, the page server after it
10 built the web page would deliver it back to the
11 web server which would deliver it to the web
12 client. This was an efficient new idea to make
13 web servers and the internet work better.

14 This primitive diagram that
15 Mr. Lowery put together was put into more formal
16 and more organized form in this drawing, figure
17 4 of the patents.

18 You see here the web client, the
19 web server, the dispatcher, the page servers,
20 and the data source. Remarkably enough, the
21 witnesses who testified in this case on behalf
22 of Microsoft, once you piece together their
23 testimony, have testified that the system that
24 they use works just like this. They take a

1 request from the web client, it goes to a web
2 server, it gets forwarded to not -- they don't
3 call it a dispatcher, instead they call it an
4 application server load balancer. But guess
5 what it does? It takes what Microsoft calls the
6 health of these smaller computers in a network,
7 in other words, it determines who is down, who
8 is busy, what's going on, it knows that, and the
9 Microsoft system, it ranks these by numbering
10 system according to how busy and available they
11 are and their load balancer, their application
12 server load balancer choses which is the most
13 efficient application server to send the request
14 to. It's the same thing that Mr. Lowery's
15 invention does.

16 You have heard that the patent
17 office spent several years studying Mr. Lowery's
18 invention and concluded after that time that it
19 was new, that it was not obvious, and that it
20 was useful. Therefore, they awarded Mr. Lowery
21 the two patents in this lawsuit.

22 You know, I had an opportunity
23 personally a few years ago to serve on a jury.
24 It wasn't a case nearly as complicated as this

1 one, but it was a wonderful experience and I
2 hope your experience will be the same. In fact,
3 some of us still keep up with each other who met
4 on that jury years ago.

5 But one of the things we
6 discovered was that it was a little odd during
7 the course of the trial when we were around
8 other jurors and the only thing we had in common
9 with them, the judge had told us we couldn't
10 talk about.

11 So once the time came that the
12 deliberations began and the judge told us we
13 were free to discuss the case, we had a lot of
14 things we wanted to discuss. We wanted to talk
15 about the evidence. We wanted to talk about the
16 exhibits. We wanted to talk about the lawyers.
17 And it was kind of exciting to do that after all
18 that time had gone by when the judge had told us
19 we shouldn't be doing that.

20 But as we had those discussions,
21 what we eventually discovered was that even
22 though there was a lot of evidence and a lot of
23 pieces of paper, it really all boiled down to a
24 few simple questions. And once we were able to

1 identify those questions, we were then able to
2 go fairly quickly through the evidence and
3 answer those key questions.

4 Ladies and gentlemen, I think
5 after you have an opportunity to discuss this
6 case, you may find that the key questions that
7 you have to answer in this deliberation are does
8 Microsoft infringe? Was Microsoft's
9 infringement willful? And what are the damages?

10 The first one we'll turn our
11 attention to is does Microsoft infringe? And
12 now, let me emphasize something at this point.
13 The discussion that I have had with you so far
14 where I showed you diagram 4, remember, and
15 showed you how Microsoft's own witnesses
16 testified that they use the same thing as
17 Mr. Lowery's invention as his idea, but we
18 freely admit, Parallel Networks freely admits,
19 that's not good enough to prove this case to
20 you. We can't simply say at a high level that
21 Microsoft uses the idea. We have to get down
22 into the details, the details you remember that
23 are the paragraphs, the numbered paragraphs in
24 the patents called claims. And we must show you

1 proof that Microsoft does everything that is
2 written in the paragraphs that we're talking
3 about in this case.

4 That's why we put Dr. Jones on the
5 stand. That's why he spent more than an hour
6 going in detail piece by piece through those
7 paragraphs and showing you the evidence that
8 proved that what Microsoft does is what's
9 described in those paragraphs.

10 What we would like to do now is to
11 drill down into that level of detail, to remind
12 you of the evidence that you have heard that
13 shows that Microsoft infringes. And to do that,
14 I would like to turn this argument over to
15 Mr. Chris Bovenkamp.

16 MR. BOVENKAMP: Thank you. And
17 thank you for being here. The question as
18 Mr. Cawley said that we're first going to
19 address is whether or not Microsoft infringes.
20 And who did you hear from? You heard from
21 Dr. Mark Jones, a professor at Virginia Tech.
22 You heard about what Dr. Jones did when he was
23 hired early in the case, the work he performed,
24 the analysis he went through, his careful study

1 of the patents.

2 You heard that Dr. Jones was the
3 only expert that traveled to Microsoft's
4 lawyer's offices to look at the source code used
5 by the FrontDoor systems. Source code, if you
6 remember, is what specifically defines how the
7 system works. Dr. Long didn't do so. No one
8 did so but Dr. Jones in this case.

9 Dr. Jones outlined for you right
10 at the start kind of like Mr. Lowery did an
11 overview of how the Bing and MSN system
12 architectures worked.

13 He focused his analysis like
14 Mr. Lowery on that important component,
15 application server load balancer. This as you
16 heard was the brains, the intelligence of the
17 Microsoft system.

18 Now, I find it interesting that
19 even though Mr. Lowery talked a lot about the
20 dispatcher and its importance in distributing
21 things to the page servers, that Dr. Jones
22 talked about the application server load
23 balancer and its importance in distributing
24 requests to Microsoft application servers,

1 Microsoft didn't talk about it as much. They
2 wanted to talk about other things.

3 You saw no evidence that
4 Microsoft's application load balancer doesn't
5 intelligently do exactly what the patent
6 describes because it does.

7 Dr. Jones didn't stop at an
8 overview of their system. He described exactly
9 how Bing and MSN work. He first went through
10 claim 43 element by element, highlighted them
11 when they were met, step by step, provided for
12 you some of the evidence that he relied upon.

13 He next went through claim 20 and
14 did the same thing, highlighting the elements
15 that were met, detailing exactly where each one
16 of these things was present.

17 I think of the road in this trial
18 as a road, and as Mr. Cawley stated, part of
19 that for Parallel Networks, part of that for
20 Mr. Lowery is fair value for the patents. And
21 this trial is part of the road that he and
22 Mr. Fokas and Parallel Networks and its
23 investors and everyone associated with that
24 company from its start back in 1995 have worked

1 on. And part of that road is our proof of
2 infringement that Dr. Jones provided. Part of
3 that road you'll hear a little bit later is the
4 benefits that the technology brought to the
5 internet and what its value is.

6 But on that road, Microsoft has
7 put some stop signs, some impediments, some
8 excuses that have been raised here in court.
9 One is that they don't infringe, and it's not
10 just one, it's multiple. We heard that there is
11 not, but one excuse that they have, there is no
12 request, there is not two, just two, they also
13 say there is no intercepting.

14 They also say there is a third
15 reason, there is no releasing. In the course of
16 this trial there may have been more things that
17 they threw out there.

18 It's an excuse. And it's your job
19 to look at the evidence and figure out what the
20 merit of that excuse is. And we'll submit to
21 you that there isn't much.

22 Now, I know that coming into this
23 case none of you were patent law experts and
24 probably hadn't built the systems that the

1 Microsoft engineers or Mr. Lowery had built.
2 But I think that's okay, because you have
3 something that's more important, you have common
4 sense. You have your experience and background.
5 And you'll hear an instruction from the Court
6 after we're all done here today after the
7 lawyers are all done talking that you as the
8 expression goes don't have to leave that at the
9 door.

10 I think that's why juries are so
11 valuable. You have been able to listen to the
12 witnesses. You have been able to look at the
13 evidence. And you're going to be able to do
14 that in more detail when you retire, when you go
15 back to the jury room and look at the evidence
16 and talk amongst yourselves about what this case
17 is all about.

18 I think in this case common sense
19 is particularly important because Microsoft has
20 raised a lot of issues. There is a lot of
21 technical things they have thrown at you. I
22 think when it gets down to it, there is some
23 pretty simple explanations for what's going on,
24 and pretty simple reasons why the claims that

1 Dr. Jones went through are met.

2 Let me talk about one right up
3 front. Ravikumar Arunachalam, you heard from
4 Dr. Jones that the person that was most
5 knowledgeable about the FrontDoor system is
6 Mr. Arunachalam. His name, his documents, his
7 testimony was everywhere in this case. You
8 listened to a video, it was a little long, it
9 was a little slow perhaps, but Parallel Networks
10 is the one that played that for you because he
11 couldn't be here. I wish he could have been
12 here so we could have heard from him directly,
13 but he wasn't. Instead, Microsoft brought other
14 witnesses whose depth of knowledge about what
15 was important in this case was nowhere near what
16 his was.

17 You heard from Mr. Griffin. He
18 had some knowledge back in 1996 about Bing and
19 MSN, but he wasn't involved with it today and
20 hasn't been for a long time.

21 You heard from Dr. Maltz,
22 certainly highly intelligent, but his depth of
23 knowledge was not that of Mr. Arunachalam, who
24 was the project lead for application server load

1 balancers, the intelligent brains of the system.

2 You heard from Mr. Alam. When
3 Mr. Campbell questioned Mr. Alam, he repeatedly
4 backed off and disclaimed any specific knowledge
5 about how Bing and MSN worked. If you carefully
6 listened to his testimony, much of it was
7 theoretical. Well, this is how IIS may have
8 worked if it was implemented like it may have
9 been in FrontDoor or Bing. He didn't work on
10 FrontDoor or Bing. Mr. Arunachalam did.

11 It's common sense. Who was the
12 important witness, that's part of your job as a
13 jury, who should you listen to.

14 Let's turn now to the three
15 noninfringement arguments, the three excuses
16 Microsoft has made in this case for why it
17 doesn't infringe.

18 First involves requests. You
19 heard Dr. Jones today say he agrees, there has
20 got to be a single request, this is where one of
21 these common sense decisions comes into play.

22 Look at what the Court's claim
23 construction is for that term. And that's going
24 to be important throughout, because the Court

1 has provided you, has provided the lawyers
2 explanation for what these terms mean.

3 Request is defined as a message
4 that ask for a web page. What generates that
5 message? It's the client. What did
6 Mr. Arunachalam say about the request? He said
7 that it comes to the front of V2, that the
8 request is then forwarded to V1 of FrontDoor,
9 then FrontDoor version 1 forwards it to Bing in
10 its partner endpoints.

11 Now, if you're keeping track of
12 the times that forward was used in this case,
13 you would have lost count. You would have given
14 up. It was used everywhere. Used in the
15 documents that Microsoft used to describe how
16 its system worked. It was used by its witnesses
17 in testimony that was taken before this trial
18 started.

19 And what's the significance of
20 forward? We know how e-mail works. When you
21 forward an e-mail, you don't start from scratch,
22 you take what was received and you send that on.
23 There may be some things added, but it doesn't
24 change the fact that what's included in that

1 original e-mail, or what's included in the
2 forwarded e-mail was the original e-mail.

3 Another point of common sense.
4 You probably heard enough about pizza. In some
5 sense we didn't choose that, that happened to be
6 the example that Microsoft used in its own
7 documents as the query, but again, think about
8 the testimony. A user sends a request, a search
9 for pizza. That message doesn't change. It
10 doesn't change into a request for hamburgers, it
11 doesn't change into a request for chocolates, it
12 doesn't change into anything else.

13 Is there things added to it?
14 Sure. But that doesn't change the fact that
15 it's a pizza request.

16 You heard testimony about raw
17 versus cooked. If you have a raw potato and you
18 cook it, it's still a potato. You have raw
19 tomatoes, you cook them, they're still tomatoes.
20 It doesn't change the fact, the essence of what
21 it is. That's what happens in the Bing and MSN
22 system, they take the user request and they do
23 exactly what the claim requires. They intercept
24 it, they route it or transfer it, they process

1 it, they use it to return a web page. It's
2 common sense.

3 Dr. Maltz said exactly that. I
4 asked him, and we have it again, correct,
5 search? Q=pizza. If you remember, that was the
6 specific thing, or at least one of the specific
7 things that was included both from the client to
8 FrontDoor and FrontDoor to the application
9 servers.

10 I asked him, that was exactly what
11 was in the original request; correct? His
12 answer, yes.

13 Microsoft's first excuse has no
14 merit. Their second excuse, we don't intercept.
15 There has been a lot of talk about diverting and
16 handling and processing. Again, the Court's
17 claim construction is very simple, the language
18 is very simple, if you just read through it in
19 the order that the Court provided to you.

20 The first part of it is diverting
21 the handling. It doesn't say diverting before
22 handling. It says diverting the handling.

23 Where does it take place? At the
24 web server. Where does it have to be diverted

1 before? This is the key, think about what
2 Mr. Lowery said was the problem he was solving,
3 the problem he was solving is everything was
4 being done in the web server. The key was
5 off-loading that request, intercepting, sending
6 it somewhere before that web server dynamically
7 generated a web page.

8 This is exactly what Microsoft
9 does. Mr. Arunachalam testified clearly that
10 what happens is the request comes in, once it
11 receives a request, FDV2, it forwards it, the
12 request, to the module.

13 You heard from Dr. Long when he
14 testified, that it was his opinion that there --
15 that there can be handling before the request.
16 He referenced a -- when I asked him and followed
17 up, he mentioned that, well, there is this issue
18 about whether there is a little processing or a
19 significant amount of processing or a little
20 handling or a significant amount of handling,
21 and there was a little back and forth about
22 that. And there has been a lot of back and
23 forth about that between all of the witnesses.

24 When it came down it to, and I

1 asked him the question, Dr. Long, is there any
2 reference to a little amount of handling or a
3 significant amount of handling explicitly in
4 that construction, the construction I was given
5 by the Court? What did he say, in that
6 construction, that is correct, there is not.
7 There is not. There is no requirement present.

8 Another piece of evidence that I
9 think is relevant to this are two numbers taken
10 from Plaintiff's Exhibit 642, this was a
11 scorecard giving kind of an overview of what's
12 happening in Bing and Plaintiff's Exhibit 654,
13 this is a document that Mr. Bone relied upon in
14 doing his damages analysis. The first is the
15 amount of page load time overall for a Bing
16 request.

17 Now, Microsoft wants to suggest
18 that what's done at FrontDoor, what's done at
19 the web servers is significant and an amazing
20 amount of work, but look at what their own
21 documents show the time is that's taken in
22 FrontDoor compared to the whole page load time.
23 Look at what it says. 1,043, this was in
24 milliseconds, those are thousands of a second.

1 That's a little over one second on average
2 during that month for a page to load.

3 Look at what Microsoft has said
4 about the time it takes FrontDoor to do its
5 processing, processing that Dr. Bone identified
6 as related to load balancing. These are various
7 measurements and goals, but they're all the
8 same, 43, 45, 44 milliseconds. Compare those
9 two numbers. There is a lot of processing
10 that's taking place somewhere else.

11 And we would submit to you where
12 that processing is taking place is not at
13 FrontDoor, the numbers don't lie, it's at the
14 page server.

15 Again, common sense, look at
16 Plaintiff's Exhibit 763, it's undisputed that
17 this is for search a description of all of the
18 computers that are at these application server
19 endpoints. There is a lot of processing that's
20 going on in there.

21 If you had a question, let's talk
22 to Mr. Arunachalam. Where does the request go
23 for the dynamic content, the thing that you
24 heard Dr. Jones talk about takes the most

1 processing time. Where does it go? It goes to
2 the Bing endpoints. Microsoft's second excuse
3 has no merit.

4 Let's to go their third excuse.
5 They say there is no releasing of the web
6 server. The Court construed this term very
7 specifically, releasing said web server to
8 process other requests or releasing HTTP to
9 process other requests, it means freeing the web
10 server to process other requests.

11 It's pretty simple when it comes
12 down to it. What was the point of this? Well,
13 the point was that you can't do everything at
14 the web server. And so let's send the work from
15 the web server, off-load it to something else.
16 So we have a little depiction of what was going
17 on.

18 If you have a web server that's
19 handling requests, the question is when you send
20 the request to a page server, when a page server
21 receives a request, does it free resources?

22 Now, there is a lot of debate
23 about memory. You're going to hear Microsoft's
24 counsel talk about memory being held and threads

1 being held and connections being held, and we
2 may disagree about their characterizations of
3 that, but you don't even have to go there.
4 Because there is something even more important
5 of a resource that's freed by sending the
6 request from the web server to the page server,
7 it's processor cycles. Think about when you're
8 going to buy a computer which is accused of
9 being the web server in this case, what are the
10 resources that are advertised? Processor speed.
11 It's the number of gigahertz or it's memory,
12 it's processor speed. Those are the things.

13 Processor speed is just as much a
14 resource of the web server as memory as
15 connection.

16 So what happens when the web
17 server decides to send a request to the page
18 server? Well, the page server receives it, and
19 common sense, the web server is going to be free
20 to do more.

21 The next one gets sent, the same
22 thing happens. We now have a second server
23 handling some of the requests, the dynamic
24 processing, the web server can handle more.

1 Another one is off-loaded. What happens? The
2 web server can handle more. It's not that
3 complicated, freeing the web server to process
4 other requests is just what the Court said it
5 means. If processor cycles are freed, which
6 it's undisputed they are, no one contradicted
7 that fact, then this limitation is met.

8 This about the number of requests
9 that are going to Microsoft's FrontDoor servers
10 every month. Plaintiff's Exhibit 642 showed you
11 the number for a month that that system has to
12 process. Three billion plus. This wasn't
13 something odd, it wasn't because it had to be a
14 Super Bowl or some big event or something, this
15 is a regular occurrence. Every month Bing has
16 to process at least, maybe more, three billion
17 requests.

18 If that was being done by one
19 server, what would happen to that system? Well,
20 we know what Microsoft did, they created
21 FrontDoor to be a server that intelligently
22 routed things to back end processing like what's
23 shown in Plaintiff's 763. That's why they have
24 all these computers. They're not there because

1 they look pretty, they're not there because
2 Microsoft just, you know, well maybe we should
3 put a whole bunch of computers together, they're
4 there to serve a purpose. They're there to
5 off-load processing from the web servers so the
6 web servers can do more.

7 Those are the three arguments, the
8 three excuses that Microsoft is making. Each of
9 those we believe has no merit.

10 When you go back to deliberate,
11 you are going to be provided something like
12 this. You are going to be asked to consider the
13 evidence, and we hope you do so carefully, take
14 your time, think about it.

15 Ultimately you're going to be
16 asked to decide whether there is infringement
17 and the very first question is just that. Is
18 there infringement? We believe that if you
19 consider all of the evidence -- and that's what
20 we want you to do, we want you to consider
21 everything. If you consider the evidence and
22 you find that we have proven by preponderance of
23 the evidence that Microsoft directly infringes
24 these claims, that Bing and MSN do what

1 Dr. Jones says it does, that you should check
2 yes for Claim 20, Claim 2 21 and Claim 49 of the
3 '554 Patent and Claim 34 and 78 of the '335
4 Patent. So that's a first step in this road
5 that we're walking down. It's the first that
6 Mr. Cawley said that you're going to need to
7 talk about when you go back to the jury room.

8 What's the second question? The
9 second question that you need to answer if you
10 find that Microsoft infringes is was Microsoft's
11 infringement willful? Who did we here from on
12 this topic? Well, we heard from Terry Fokas and
13 Terry Fokas has been involved with Parallel
14 Networks and its predecessors epicRealm and
15 InfoSpinner for a long time. And I remember a
16 lot of things about Terry Fokas' testimony.
17 Most important thing that I remember is that he
18 believe in Keith Lowery. He met Keith, he got
19 to know him, became a friend with him and he
20 believed that not only was Keith a good guy, he
21 was a genius. And he followed his vision and he
22 put his own money on the line for that vision.

23 Now, you also heard from Mr. Fokas
24 that he's a lawyer. I I hope you don't hold

1 that against him. You heard a lot back and
2 forth about what happened in all these lawsuits
3 that were filed and there's argument about when
4 this was filed and when that was filed. And
5 largely that doesn't have relevance frankly to
6 this case, but what does have relevant to this
7 case is that Mr. Fokas told Microsoft that they
8 infringed. And he told them why they infringed.
9 And Mr. Fokas, before this lawsuit was even
10 filed, wanted to enter into a deal with
11 Microsoft so that they could make use of Mr.
12 Lowery's invention, to help the internet run
13 better, to help their systems run better. And
14 unfortunately he was unsuccessful and
15 unfortunately we're here today, but that's what
16 happened.

17 Now, Microsoft has an excuse here
18 too. You haven't heard much from Microsoft on
19 this, but it's still there. You may hear that
20 there's principles involved or this or that.
21 You're going to hear argument that they were not
22 willful, but what you didn't hear was any
23 Microsoft witness tell you what they were
24 thinking after Mr. Fokas told them that they

1 were infringing. And why? They brought
2 engineers to testify, Mr. Griffin, Mr. Alam,
3 Dr. Maltz. They didn't say anything about what
4 Microsoft was thinking in 2012 when Mr. Fokas
5 told them they were infringing. You heard from
6 no one. Why? The only evidence that was put on
7 was what Mr. Fokas did and a lack of response
8 from Microsoft.

9 The second question you're going
10 to be asked to answer is whether there's willful
11 infringement. And if you consider the evidence
12 and we think there's Mr. Fokas on our side and
13 little, if any, on Microsoft's side, then you
14 should write into this space, yes. Parallel
15 Networks has proven by a preponderance of the
16 evidence that Microsoft's infringement of the
17 Patents-in-Suit was willful. That concludes the
18 first two steps on this road. And hopefully
19 I've addressed the excuses that Microsoft has
20 provided.

21 I'm now going to hand the clicker
22 to Ms. Leah Buratti to talk about the last step.

23 MS. BURATTI: Thank you. Good
24 morning. The last question you'll have to

1 address, what are the damages? You've heard
2 from just one damages expert in this case,
3 Parallel Networks' damages expert, Mr. John
4 Bone. He came to court, he took the stand, he
5 took the oath, and he told you about his careful
6 meticulous analysis to calculate what a
7 reasonable royalty should be in this case that
8 would fairly compensate Parallel Networks for
9 Microsoft's infringements. Mr. Bone also told
10 you about how as part of his analysis he
11 considered the important benefits of the
12 Patents-in-Suit. He considered its reduction in
13 page load time, he considered that it provides
14 better availability and reliability, he told you
15 that he considered that the Patents-in-Suit
16 helped scale and that they bring cost savings.
17 He didn't just tell you about this, he showed
18 you and told you about some examples in
19 Microsoft's own documents that show how
20 Microsoft appreciated these benefits of the
21 Patents-in-Suit. He showed you one of
22 Microsoft's technical documents that discusses
23 the implementation of ASLB, which is the
24 patented -- Parallel Networks' patented

1 technology implemented into FrontDoor and he
2 talked about how, as part of that technical
3 document, Microsoft said that it wanted to
4 improve overall system latency or page load
5 time, and he talked about three other benefits
6 that relate directly to reliability and
7 availability.

8 He also showed you another
9 example, the Bing score card. That's the second
10 one we see here. And the Bing score card Mr.
11 Bone explained that Microsoft thinks that page
12 load time is so important that it focuses on
13 every millisecond of page load time savings.

14 Now, Mr. Bone also told you that
15 these benefits are of particular importance to
16 Microsoft because its web pages are so big and
17 busy. In fact, Bing in 2015 was the sixth
18 busiest website out there. And MSN was the 17th
19 busiest website out there. Now, Mr. Bone told
20 you about all of these benefits and then he
21 explained to you that as part of his calculation
22 of damages in this case he was only able to
23 quantify a minimum amount of those benefits, a
24 minimum amount of damages that related to just

1 one of those benefits and that was the page load
2 time. And so there's still all of these other
3 benefits out there that Microsoft gets that are
4 not included in this calculation that Mr. Bone
5 has made.

6 Mr. Bone explained to you that he
7 used a cost approach to calculating that amount
8 of benefit that Microsoft is receiving and he
9 based his damages calculation on that amount.
10 And he explained that it would be irrational for
11 a company to incur a cost between an
12 infrastructure like this without an expectation
13 of achieving at least that amount in benefits.
14 And he explained that that amount was \$10.8
15 million. He also explained that that \$10.8
16 million is the bare minimum that Microsoft
17 should pay to Parallel Networks as a reasonable
18 royalty in this case.

19 Now, Microsoft's lawyers are going
20 to come up after me and they're going to tell
21 you, I'm sure a lot of things, but I'm guessing
22 they're going to tell you Microsoft doesn't
23 infringe. I'm guessing they're going to tell
24 you if we infringe, it wasn't willful. And I'm

1 guessing they're going to tell you that if we
2 infringe, \$10.8 million is too much or Mr. Bone
3 got it wrong or there should be no damages here.
4 But here's the thing. Microsoft's lawyers are
5 not damages experts. Microsoft's lawyers did
6 not come into court and take the stand, take the
7 oath and tell you that they as experts had
8 calculated the amount of a reasonable royalty in
9 this case. In fact, no one from Microsoft did
10 that. They could have. Microsoft could have
11 brought its own damages expert to come and tell
12 you an amount. They chose not to do that.

13 So when you all go back and begin
14 your deliberations, we ask if you conclude that
15 Microsoft infringes that when you complete the
16 amount of damages to be awarded to Parallel
17 Networks that you award \$10.8 million.

18 Now, Microsoft is going to come
19 talk to you again and then after that you'll
20 hear from Mr. Bovenkamp. Thank you.

21 THE COURT: All right. Ms.
22 Brooks, closing.

23 MS. BROOKS: Thank you, Your
24 Honor.

1 Good morning. Just to make one
2 thing very clear right up front, I am not here
3 to tell you that -- I am here to tell you we
4 don't infringe. I am not here to tell you if we
5 do infringe it's not willful. I'm here to tell
6 you we don't infringe. I'm not here to tell you
7 if we do infringe and even if it's willful \$10.8
8 million is too much money. I'm not here to tell
9 you that because we don't infringe.

10 What I am here to tell you is why
11 we are here. You may have been asking yourself
12 throughout this whole trial, \$10.8 million, yes,
13 that's a lot of money, but to be honest,
14 Microsoft is a highly successful company and
15 \$10.8 million, while still a lot of money, could
16 frankly fairly easily be paid by Microsoft to
17 Parallel Networks. And in fact, you heard Mr.
18 Lowery and Mr. Fokas talk about how expensive it
19 is to bring these kind of cases. It's equally,
20 if not more, expensive to defend them.

21 So why are we here? It isn't
22 about the money. It is about the principle. We
23 are not willing to pay Parallel Networks one
24 dime for our invention that we spent years on.

1 We started it in 1993. We laid the ground,
2 literally the property, ourselves, started in
3 1993 and began building on that property, our
4 property since then. That was when the MSN
5 project first began and you heard from Mr.
6 Griffin. We identified the problem of load
7 balancing. And intelligent load balancing as
8 early in our documentation, earlier than this,
9 but in our documentation in October of 1994, a
10 year before Mr. Lowery had his epiphany on the
11 airplane coming back from Australia. And we
12 applied for a patent in June of 1995, slightly
13 less than a year before Mr. Lowery applied for
14 his patent and we had an actual product in the
15 market MSN 1.0 that did dynamic load balancing,
16 months before Mr. Lowery applied for his patent.

17 So we are here on principle and we
18 are here on principle on behalf of Bill Griffin.
19 We are not going to go tell him that we paid
20 some other company money for his pioneering
21 invention. This was his testimony. By August
22 25th, 1995 Windows 95 had shipped and in Windows
23 95 was MSN 1.0 with load balancing. And he told
24 us -- I'm going to get emotional about this, but

1 it was really a fairly emotional moment.
2 Remember he hold us how proud he was, how many
3 years he worked, that e-mail where everybody had
4 signed it. How proud must they have been when
5 it launched in midnight of August 1995, months
6 before Mr. Lowery applied for his patent? They
7 had spent so many many hours fixing last minute
8 bugs, getting everything ready and he's so proud
9 have it to this day he's got the signed e-mail
10 and he's got his T-shirt, which he didn't bring
11 to court. That would have been a bit hokey, but
12 that's how proud he is.

13 We're standing on principle that
14 we're not going to go back to Bill Griffin and
15 tell him that we paid another company for his
16 pioneering invention.

17 And here it is, right out of his
18 specification, there is the intelligent load
19 balancer, the Marvel Gateway right there. From
20 1995. It's so faded the document is so old that
21 it's faded. And I portrayed it in opening
22 statement this way. Now, when I gave my opening
23 statement I had no idea what Mr. Lowery was
24 going to do to come up and explain to you his

1 invention. But look what I showed in opening
2 statement right here, I showed the client here,
3 the requests going in, the Gateway server, the
4 intelligent load balancer right there in the
5 middle figuring out which request to route to
6 which application server. Mr. Lowery came in
7 later that day and drew this on the white board.
8 Look at what I showed in opening and look at
9 what Mr. Lowery said his invention was that came
10 a year later. Virtually identical. And I
11 didn't know that he was going to draw that.

12 But what's interesting is that we
13 have to be fair. Mr. Lowery's invention is
14 slightly different than Mr. Griffin's. Mr.
15 Griffin got a patent on his and Mr. Lowery got a
16 patent on his. And I don't know if you remember
17 this in Plaintiff's case, where they put up the
18 1999 application for the '335 Patent and they
19 showed that Mr. Griffin's patent was cited on
20 the front of it. Unfortunately I should have
21 put it in my slide deck, but they showed that
22 Mr. Griffin's patent was cited on the front of
23 the '335 Patent and they showed it I guess to
24 show that we had notice of Mr. Griffin's patent

1 because our patent was cited on the front of it.
2 But what that also shows is that actually what
3 we were doing was different enough, even though
4 it came first, was different enough from what
5 Mr. Griffin was claiming that he could get his
6 patent in addition to us having our patent that
7 came earlier.

8 And now they're doing a 180 and
9 saying that actually what we're doing is the
10 same. You can't have it both ways. You can't
11 get your patent, saying well, what Microsoft
12 does is different, and then try to get your
13 money by saying what Microsoft does is the same.
14 And counsel asked you to use your common sense.
15 I ask you to use it too. You cannot have it
16 both ways. What's interesting, though, with all
17 credit to Bill Griffin and his team, I mean, it
18 was really pioneering what they did. And all
19 credit to Mr. Lowery and his group, it was very
20 pioneering what they did. Neither Mr. Griffin
21 nor Mr. Lowery back in the mid '90s could see
22 what was coming because, and this is what
23 actually Dr. Jones told us, he said when you
24 file a patent, it becomes frozen in time.

1 Remember that. You can't change it. So that's
2 your invention, you can't later say, oh, I
3 didn't really mean it, it's bigger than that, it
4 does more than that, that's it. And so because
5 it's frozen in time and you don't have a crystal
6 ball to see what's coming, then what happens?
7 What happens --

8 Oh, I'm sorry, I want to show you
9 the difference. 1995, if you wanted to order a
10 pizza on the internet and the only reason I was
11 able to get this is because Pizza Hut on the
12 20th anniversary of the first purchase of a
13 pizza online, which happened to be in 1995, they
14 put back on their original website called
15 PizzaNet, where you could order right here.
16 Look at the difference between then and now as
17 to how you go about ordering something. But
18 this is what it looked like in black and white,
19 no color, the PizzaNet from 1995.

20 Fast forward to 2012, this is an
21 actual article, E Commerce sales topped \$1
22 Trillion for the first time in 2012. And that's
23 the time period of the technology they're
24 accusing of infringing this 1995 invention. Use

1 your common sense. Can really that technology
2 from 1995 really be dealing with \$1 trillion in
3 E commerce? No.

4 But Mr. Griffin really couldn't
5 see what was coming. Mr. Lowery couldn't see
6 really what was coming. But David Maltz did.
7 This is some of the testimony David Maltz -- and
8 obviously you took notes. I just wanted to
9 highlight a couple things. He talked about the
10 handling of the request and this goes correctly
11 to whether there's infringement. Do we handle
12 the request before they're diverted? And the
13 answer is yes, we handle the living daylights
14 out of them. And why do we? Because times have
15 changed. Frankly until Dr. Maltz told us about
16 that lizard group, I don't -- who would do that?
17 Who would want to stop kids from playing with
18 their Xbox and their Sony Playstation that they
19 got for Christmas? I don't know, but Dr. Maltz
20 knew they were out there and a scientist at
21 Microsoft knew they were out there and so as a
22 result here's what they have to do to the
23 requests.

24 What they do is they look for

1 requests that actually cause Microsoft services
2 to crash. We see requests that correlate with
3 crashes on our system and we'll actually block
4 those requests from going further into our
5 services. And does that protection occur --
6 this is Mr. Barnes asking -- Mr. Wolff asking
7 this question. Does that protection occur after
8 the request is received? Yes, it does. In
9 FrontDoor version 2. And then he's talking
10 about Dr. Maltz, how it is processed?
11 Processing refers to a bunch of steps we do to
12 gather more information about the request. That
13 is handling. Under Mr. Lowery's system, that
14 request that comes in and is hidden, it's a
15 request that's going to crash the system,
16 request that's going to steal your information,
17 it's a request that's going to make it
18 impossible for kids to play their Xbox. That
19 request would get intercepted right at the web
20 server before there's any of this handling going
21 on and it would get diverted to the page server
22 and those page servers are back end servers over
23 which some of them are third party servers over
24 which Microsoft has no control.

1 Can you imagine if we used Mr.
2 Lowery's invention today. We could end up with
3 the entire system around the world crashing.
4 And I'm not -- this is no disrespect for Mr.
5 Lowery. He couldn't see, nor did Mr. Griffin
6 see what was to come. But David Maltz saw what
7 was to come and that's why built into FrontDoor
8 is all of this handling of the request at the
9 web server before it ever goes to the page
10 server to keep us all safe.

11 And here's just some of the stuff
12 they do. All the protection stuff they do and
13 all the request processing stuff they do to try
14 to keep all of us safe and the system working.
15 And it would never happen if we were using Mr.
16 Lowery's invention.

17 Who else saw the tidal wave
18 coming? Mr. Alam. He tended to give very long
19 answers, so I'll try to -- but I didn't want to
20 take them out of context, so I put the whole
21 answer up here, but he was giving here, again,
22 why is there so much handling of the request in
23 IIS? For example, in real life example of this
24 is security. In this case we want one place --

1 he was talking about the web server -- where you
2 do security. You want one place that basically
3 validates the requests and makes sure yeah, are
4 these actually secure sites, are these attack
5 requests, do they look like shady requests in
6 the system. You want one place to do that. And
7 yes, we do, our web server. The last thing we
8 want is for that request that is an attack
9 request or a shady request to get diverted at
10 the web server, sent to the page servers and
11 crash the whole system. And that's what would
12 have happened if we had actually been using Mr.
13 Lowery's invention.

14 And this is how Mr. Alam and his
15 team spent years creating software that would
16 make sure that we kept those kind of systems and
17 security checks safe in our web server. And
18 this is a blow up of the IIS Pipeline.

19 Why else are we here? So I said
20 it's not about the money. But I'm going to talk
21 for a moment about the money, not because I'm
22 going to tell you we shouldn't owe \$10.8 million
23 if we're infringing. If we're infringing \$10.8
24 million, fine, but we're not. What I did want

1 to do, though, is stop for a moment and walk you
2 through what Ms. Hufnal was trying to show here,
3 because I'm not sure, maybe all of you did get
4 it, but I'm not sure and I'll take a moment and
5 say it.

6 Here's the damages calculation of
7 Parallel Networks. They had such difficulty
8 being able to point to a document that would say
9 this is the value of Mr. Lowery and Parallel
10 Networks' invention. They couldn't find one,
11 couldn't find a document they could point to.
12 So instead they did the most counterintuitive
13 argument. Remember how supposedly the invention
14 makes things faster and you just saw that in
15 closing how oh, you have the web server and it's
16 all in red, but you divert part of it and now
17 it's partly in red and then you divert another
18 and then it's lesser in red and so on and that
19 makes the whole system faster? Their damages
20 argument is that allegedly because we're using
21 Parallel Networks invention our system is 45
22 milliseconds slower. They are literally saying
23 that. They're saying that by using the
24 invention that's supposed to make things faster

1 our system is slower and that that 45
2 milliseconds has value to Microsoft and
3 therefore if you monetize that, that 45
4 milliseconds of slowness equates to \$10.8
5 million. I know -- I can't explain it to you,
6 because it's inexplicable, but that's their
7 damages theory.

8 And so what Ms. Hufnal did was she
9 showed, okay, so if we had less -- and this is
10 his number right here. This was his column of
11 well, you take the 45 milliseconds and you times
12 it by these various things, multiply it by these
13 various things and you come up with this number.
14 So Ms. Hufnal said, okay, so if we had less
15 delay by not using your invention, let's say we
16 only had a 35 milliseconds delay, it's called
17 latency, then she did the math and that came out
18 to 8.9 million.

19 And then she said, so what if it
20 turned out by using your invention we had even
21 bigger delay. And over here then she used 55
22 milliseconds and did the math and it came out to
23 14 million.

24 And so what Parallel Networks is

1 literally saying to you, ladies and gentlemen of
2 the jury, is that by using their invention, the
3 slower you go, the more you owe. And by using
4 their invention, the greater the delay, the more
5 you pay.

6 Use your common sense. That makes
7 utterly no sense. But it makes utterly no sense
8 because frankly they have no case.

9 And there is no dispute, Mr. Bone
10 agreed, Ms. Hufnal asked him:

11 "Question: In other words, the
12 slower the Microsoft's system goes, the more
13 they would owe Parallel?"

14 I guess if we use their invention
15 and it brought us to a screeching halt, we would
16 owe them a billion dollars.

17 He said, "Yes, based on this
18 analysis, that is correct."

19 I can't explain it, I can only say
20 to you that if they would play that fast and
21 loose with the figures, they'll play that fast
22 and loose with the facts.

23 So now let's go to the other
24 reason we stand on principle, Terry Fokas. From

1 the beginning of the case, Mr. Lowery told us
2 about how he came up with this invention and to
3 his credit, he got \$90 million in funding when
4 he was -- this is Mr. Lowery over here,
5 InfoSpinner in 1995, and then they had a
6 different business model in 2000, Epic Realm,
7 and this is Mr. Lowery, and investors invested
8 \$90 million in their company.

9 But then came the .com crash and
10 enter Terry Fokas. And Mr. Fokas chastised me
11 for not being able to keep the names of his
12 company straight. And he's right, I could not.
13 I could keep a complicated data path straight,
14 but I could not keep all of Mr. Fokas' companies
15 straight.

16 But apparently according to him,
17 it turned into Epic Realm Licensing, LC, that
18 turned into Epic Realm Licensing, LP, that
19 turned into Parallel Networks, LLC, that turned
20 into Parallel Networks Licensing, LLC.

21 And counsel just got up here and
22 said that we didn't bring a witness to tell what
23 you, Microsoft, was thinking when Terry Fokas
24 told us he believed we were infringing. We

1 didn't need to bring a witness, we showed you
2 what we were thinking, we sued. We sued
3 Parallel Networks for a declaratory judgment
4 that those patents. They were accusing us of
5 infringing, were not infringed, and/or they were
6 invalid. And what we got for that was
7 Mr. Fokas, we were right here in Delaware,
8 dragging us to Texas and then ending up
9 dismissing the case in Texas and then rebringing
10 suit again here in Delaware. You know what we
11 were thinking, we showed you what we were
12 thinking.

13 And this is what Mr. Fokas told us
14 about what he was thinking. Now, I only put
15 this up here, it has nothing to do with
16 infringement, but there was so much testimony
17 from the witness stand about how much money, and
18 Mr. Lowery is right, he put a lot of money into
19 his company, but he did get 90 million in
20 investments out of it.

21 Mr. Fokas told you he took a
22 second mortgage out on his house. But he did
23 get according to him I think he said almost 32
24 million in licensing revenue. So we got a lot

1 of tens of millions of dollars floating around
2 there. And who gets that? Well, we got the
3 Parallel Networks Licensing which is owned 75
4 percent by Parallel Networks, and then the other
5 20 -- this is the breakdown of Parallel
6 Networks, which is 65 percent of that goes to
7 Terry Fokas, 15 percent to Mr. Lowery, and 20
8 percent to other investors. And then, talking
9 about Parallel Networks Licensing, 75 percent is
10 owned by Parallel Networks and the other 25
11 percent is held by a patent funding company
12 called Parabellum.

13 So when Mr. Fokas is up there
14 pleading poverty, he's got a partner called
15 Parabellum who is in the line of work of funding
16 litigation, of helping companies like his sue
17 other companies. So I just wanted to get that
18 out of the way in case we were feeling sympathy
19 for poor Mr. Fokas that he had to take a second
20 mortgage on his home. He admitted that
21 Parabellum is indeed a litigation funding
22 company.

23 Let's just talk a moment also
24 about witnesses and the credibility of

1 witnesses. You're going to have a jury
2 instruction, and it's going to be up to you to
3 judge the credibility of witnesses. What was
4 their demeanor like? What was their testimony
5 like? Were they believable?

6 And Mr. Fokas sat on that witness
7 stand under oath and told you that any recovery
8 they got, it was going to go to pay off the
9 investors. Of course he forgot to tell you that
10 he was one of the investors. And to hire
11 engineers. And I don't know if you remember, I
12 said, "Really, Mr. Fokas?"

13 "Yes, we're going to use it to
14 hire engineers."

15 Then I asked him, "When was the
16 last time there were engineers at Parallel
17 Networks Licensing?"

18 "Answer: There has never been any
19 engineers."

20 It's up to you to decide if Terry
21 Fokas was telling you the truth.

22 So let's get down to business.
23 This is a patent case, as I'm sure you were all
24 so excited to learn when you got picked for this

1 jury. And so let's get to what the issue is all
2 about.

3 In opening statement, even though
4 this was a patent case, counsel for Parallel
5 Networks stood before you, and there is
6 transcripts that we see these people here doing.
7 He talked for twenty-seven pages, two pages were
8 devoted to talking about the patent and the
9 accused products. And one of those pages was
10 about how there really wasn't time to talk about
11 the patent. We got to hear about the life of
12 Mr. Lowery, and he's to be commended for all the
13 obstacles that he's overcome and there have been
14 tremendous amounts of them, but that frankly has
15 nothing to do with the question that you are
16 being asked to answer.

17 We heard all kinds of things that
18 have nothing do with what's going to be on the
19 verdict form. I spoke, two pages longer than
20 counsel for Parallel Networks did, but I spoke
21 for twenty-six out of twenty-nine pages about
22 the patent and the accused products, even though
23 we're not the plaintiff and we don't have the
24 burden of proof, and we're not -- and we have

1 lots and lots of patents, including on the
2 accused products, but we're not the patentholder
3 in this case asserting a patent.

4 So let's get down to it. The
5 question you're going to be asked is did
6 Parallel Networks prove that the accused
7 products, MSN and Bing infringe the asserted
8 claims. I have the verdict form here, and I was
9 going to ask to put it on the Elmo, but counsel
10 already put it up there, and I'm not going to
11 presume in any way to tell you how to fill it
12 out. It's a fairly simple verdict form, so I'm
13 sure you're going to be able to follow it pretty
14 easily. But I did want to point out that the
15 question is, has Parallel Networks proven by a
16 preponderance of the evidence that MSN and Bing
17 infringe.

18 Let's see in a summary form what I
19 did with these boards? Dr. Long as you may
20 recall went through every single element. Now,
21 let me stop right there. Remember if only one
22 is missing, we don't infringe, just one. We
23 pointed out three.

24 Now, you may decide oh, I think

1 there was only a single request. Well, then,
2 we're down to two. You may decide oh, maybe
3 there is releasing. Then we're down to one.
4 They have to prove to you all three of them we
5 are performing.

6 So this is the said request one.
7 And Dr. Long walked us through very carefully
8 before I crossed out and showed you all the
9 reasons why we are not performing, the accused
10 products performing that limitation.

11 Then I underlined the releasing,
12 and he walked you through the evidence on that.
13 I'm going to touch very lightly on it in a
14 minute, but we're not doing it, either. Then we
15 looked at the intercepting. And again, Dr. Long
16 walked you through and explained in detail how
17 we're not doing that limitation, either.

18 So these are all, everything that
19 is lined out here is what is not happening in
20 MSN and Bing and, therefore, there can be no
21 infringement if you find one of them.

22 The '335 claim, we went through
23 the same exercise, said request, no. Releasing
24 no. Intercepting, no.

1 And this is Dr. Long's summary.
2 He was up there for I think well over an hour,
3 at the end he would sum up on each one, single
4 request, do we meet that requirement, no.
5 Releasing, no. Intercepting, no.

6 And again, in judging witnesses,
7 you can judge -- there is an instruction on
8 expert witnesses. You can judge them based on
9 their credentials, their background, their
10 experience, what kind of things they looked at.

11 Now, Dr. Long has been criticized
12 for not looking at source code and how Dr. Jones
13 did. And you remember Dr. Jones had some source
14 code up there and then they handed you a page so
15 you could see what it looked like.

16 Dr. Jones never showed you one
17 line of source code to support his opinions. He
18 never said now if you look right here, this
19 shows a single request. If you look right here,
20 this line of software code or source code, this
21 shows there is an intercepting. If you look
22 right here, this shows that the web server is
23 being released, not one that would show that he
24 looked at source code. He didn't use any of it

1 to support his opinion.

2 On the other hand, Dr. Long talked
3 to the very engineers who wrote the source code
4 to support his opinion.

5 So let's get down to it. What is
6 the invention? It's been a while, the first
7 witness we had was Mr. Lowery, and so what did
8 he say was the invention? He admitted he didn't
9 invent web servers. He admitted he didn't
10 invent web pages. He admitted he didn't -- I
11 guess I repeated myself twice, the web pages.
12 He admitted he didn't invent the idea of a
13 server that receives and processes a web page
14 request. He admitted he didn't even invent
15 dynamically creating web pages. He admitted he
16 didn't invent the HTML language we have been
17 talking about. And, in fact, he admitted that
18 he didn't even invent the concept of load
19 balancing that others had done that before which
20 is key. They're trying to tell you without his
21 invention the internet won't work. That wasn't
22 his invention.

23 His invention is a very narrow and
24 specific way of doing this load balancing that

1 frankly has been frozen in time back in 1995 and
2 is archaic and is being used by no one anymore.

3 They may get up in rebuttal, and I
4 don't get to respond and say well, then, why did
5 all these companies take a license. You saw the
6 name of those companies. Most of them were
7 pretty small. And you see how expensive it is
8 here to have to challenge these lawsuits. We
9 are lucky, Microsoft does have the benefit of
10 having the resources to be able to stand on our
11 principles and not have to capitulate. Those
12 other companies may not have.

13 But you also saw the one clause in
14 the one license you actually did see that said
15 that this settlement agreement shall not be used
16 as an admission of liability anywhere at any
17 time.

18 So if they get back up and argue
19 that all these other companies acknowledge they
20 were infringing, that's simply not true.

21 So what is the invention? This is
22 the essence of the invention. My question to
23 Mr. Lowery, "Sir, is it true that the adapters
24 were built to intercept the functionality of the

1 web server and off-load it from the web server's
2 obligation to process the dynamic content
3 generation request? Is that true, sir?

4 "Answer: Yes."

5 He was very truthful. That's his
6 request. That is his invention, get that
7 request and leave the web server not to have to
8 process it. And you saw, we processed the
9 living day lights out of the request to keep us
10 all from having the whole thing crash.

11 His invention is the opposite of
12 what we do, literally the opposite. And the
13 patent tells us that in the '554 patent, all the
14 benefits, performance, security, extensibility
15 and scalability are each to be done not by the
16 web server the way we do, but by the page server
17 which is not what we do. Because half the time
18 the page servers aren't even under our control.
19 A completely different invention than our
20 invention.

21 And we also know that from the
22 facts. InfoSpinner, this is when it was still
23 InfoSpinner, halted work on the web server
24 because the technology wasn't critical for them.

1 Mr. Alam said that in our
2 technology, the web server is absolutely
3 critical. In fact, it is. Look at all the
4 stuff that it does. And so that's the general
5 global. Now let's drill down to the individual
6 claim limitations that we don't meet.

7 Number one, is there a single
8 request or a multiple request? With all due
9 respect to Dr. Jones, it's up to you if you're
10 going to put your weight behind Dr. Jones or the
11 man who actually wrote the soft -- the source
12 code with his team for the IIS pipeline, which
13 is where those requests get processed. Do we
14 have a single request or do we have multiple
15 requests? Answer, we clearly have multiple
16 requests.

17 Dr. Maltz, and is the request that
18 comes out of FrontDoor version 2 the same
19 request that came in? No, it's not. And you
20 can tell that just by looking at these two
21 pages. I don't know if you remember, you're
22 going to end up reading software code, you can
23 look at the original request and what it looked
24 like and it's in evidence, and then you could

1 look at the request that came out, and it is
2 different. It is simply a different request.
3 So that whether we have multiple or single
4 requests.

5 Let's look at releasing of the web
6 server. So again, Mr. Alam gave some long
7 answers. So what happens in releasing, it has
8 to release the web server to process another
9 request. So the request comes in to HTTP.sys,
10 and Mr. Alam tells us, what HTTP.sys, what
11 happens is this request will stay here. It
12 doesn't go anywhere, it stays. That's his
13 testimony under oath and nobody contradicted it.

14 And then he talks about all the
15 things that happen because it's the raw request
16 and eventually there becomes a cooked request
17 right there, we call that a cooked request.

18 Now, it's interesting because
19 counsel said well, like that's if you have a raw
20 potato and I cook it, you still have a potato,
21 but here because we have multiple requests
22 sitting in HTTP.sys is the raw potato. What
23 goes up the pipeline is a cooked potato. You
24 actually have two different potatoes. And

1 that's why we have multiple requests. And
2 that's why we also don't release the web server
3 because we got one potato -- image this is an
4 oven, we got one potato still sitting in the
5 oven, then we got another one that is fully
6 baked and now is working its way up to have it
7 scooped up to have some sour cream added and
8 some butter and some cheese added, that's the
9 cooked potato, we have two.

10 In the meantime that raw potato
11 that is sitting in that oven, that oven has not
12 been released to bake another potato. I know
13 this is a ridiculous analogy because the
14 software is so much more complicated than that,
15 but I started down the road so I'll finish it
16 up.

17 The cooked potato goes up to the
18 handler, it stays there. Let's say that's the
19 warmer, and it stays there until the other third
20 leg of this comes back and then and only then is
21 the oven released to cook another potato, the
22 warmer released to warm another cooked potato.

23 And he specifically was -- so just
24 to be clear, this is now the cooked one, it's

1 sitting up here in the execute handler, while
2 the cooked request is sitting there waiting for
3 the whole back end of the process to take place,
4 that's the application servers, who get yet new
5 requests, these new raw requests get to gather,
6 what happens, he says the execute handler has
7 not been released. The cooked request has also
8 not been released.

9 And so once the client finally
10 gets back the response, is that when the web
11 server is released to process -- this part of
12 the web server is released to process a new
13 request, that's the key, that the Court's claim
14 construction. It doesn't get released to
15 process a new request until the response comes
16 back. That's the opposite of what the invention
17 is. The invention is get that request out of
18 there, out of the web server so that that piece
19 of memory where that request would have been
20 stored is free to process a new request.

21 We don't have to do that, because
22 we've got so many different -- we can process a
23 thousand requests simultaneously. What Mr.
24 Lowery was thinking about was a very small

1 primitive system where if you had one request in
2 the web server, you couldn't process the next
3 request until that request moved onto the page
4 server, then the new request would come in.

5 That's not what we have, because the capacity to
6 process thousands of requests simultaneously, so
7 we can hang on and do take up memory.

8 Now, eventually, it will probably
9 get to a point where there's so many users we
10 might have -- we might fill our capacity and
11 then you know what happens, you know that little
12 thing that goes like this on your screen, that's
13 what you are going to see. So then our
14 scientists are going to get to work figuring out
15 yet a more efficient way to do this. And guess
16 who also said he didn't literally agree with me
17 that there was no releasing, but he agreed with
18 me that the request sat up in the execute
19 handler, he agreed, Dr. Jones, that the memory
20 would not be released then until the response
21 came back and the result of that was that that
22 memory, which is a resource, is being held up
23 and taken up until the client transaction is
24 fully processed. He agreed that we do it

1 fundamentally differently than the patented
2 invention.

3 I don't mean to be pointing at
4 you, Mr. Lowery. I'm just generally looking
5 over here for the representative of the patented
6 invention. I recognized I was doing that. I'm
7 sorry. It was really rude. I'm sorry. I
8 didn't mean it that way.

9 So let's go to the last one.
10 Intercepting. Now, this has been a very
11 interesting turn of events just this morning.
12 The Court's construction is diverting the
13 handling of said request before the request is
14 processed by the web server slash HTTP-compliant
15 device. Counsel said in his opening closing,
16 there's no requirement in here about what it
17 means or how much the handling is that our
18 witnesses said well, we do a significant amount
19 of handling. This is slight on that. If that's
20 the case and he's right, one could read this and
21 say there should be no handling, right? It says
22 divert before there's handling. Now, logically
23 there has to be some handling, even in the
24 Parallel Networks system because the request

1 does have to get passed through the web server
2 to the application server. So of course there's
3 some handling, but not the kind -- I mean, this
4 would make it sound like we can't handle it at
5 all, but I don't know if a system would work if
6 you did that. So logically you know you can do
7 a little bit of handling to be able to get it
8 from the web server to the application server or
9 the patented invention, the page server, but in
10 our case you saw over and over again we handle
11 truly the living daylights out of these requests
12 at the web server before they're diverted.

13 Now, I asked Dr. Jones to help us
14 out here, because they have the burden of proof.
15 They have to prove to you that there isn't
16 handling that goes on on the request while it's
17 at the web server before it's diverted. And I
18 was walking him up the Pipeline, the IIS
19 Pipeline and I figured I'll keep it simple, I'll
20 just talk about the modules that use the word
21 handler, because you would think if you're
22 called a handler, you're probably doing some
23 handling. And so I asked him, all right. We're
24 going up through the IIS Pipeline, let's go to

1 map handler. Now, again, just to make it really
2 clear, I asked him at this point the request has
3 not been intercepted, correct? Yes. And do
4 you, Dr. Jones, who represents the party with
5 the burden of proof, do you know what the map
6 handler does? Answer, I don't recall.

7 So how can he tell you ladies and
8 gentlemen of the jury that the map handler
9 doesn't handle the request in a way that is
10 prohibited by the Court's claim construction.
11 He can't tell you that because he doesn't
12 recall. And then I asked him about the
13 pre-execute handler. Do you know what that
14 does? I don't recall. So he failed right there
15 in his burden and obligation to you to prove to
16 you that that request didn't get handled in a
17 way that the Court's construction doesn't allow
18 before it was diverted.

19 And of course Mr. Alam told us
20 about all the handling that was going on, when
21 in computer terminology when he says that's a
22 lot of code happening here, that means handling.
23 And he gave -- I put all these pages here
24 because you have a really, really long answer

1 when he stood up here and he walked you through
2 the IIS Pipeline and described to you in detail.
3 I mean that Pipeline almost looked like a
4 gauntlet. I mean all that handling that was
5 going on with the request all before it was
6 diverted. And Dr. Maltz told you that FrontDoor
7 2 runs on IIS, so that means everything that IIS
8 does to the request FrontDoor is doing since
9 it's running on IIS.

10 And so there's no intercepting,
11 according to David Maltz, no intercepting
12 according to Mr. Alam, and of course no
13 intercepting according to Dr. Long. And of
14 course we don't know according to Dr. Jones, he
15 doesn't know. And so that is intercepting.

16 So at the end of the day you're
17 going to be asked -- the burden of proof is more
18 likely than not. It's not a big burden, 51
19 percent, but it goes both ways. Is it more
20 likely than not that we are infringing, that
21 Bing and MSN are infringing or is it more likely
22 than not that we aren't? And if you believe Mr.
23 Alam, Dr. Long, Dr. Maltz, clearly they've
24 tipped the scale in our favor. Now, if you

1 think outweighing them all is Dr. Jones, then
2 that's certainly a decision you could make, but
3 he would have to outweigh all of these gentlemen
4 and you would have to disbelieve all of their
5 testimony and only accredit his.

6 And so let me leave you with this.
7 Are you going to accredit an expert who put this
8 up in front of you when the whole claim is about
9 what does and doesn't happen at the web server
10 and he left off the web server. You know why he
11 left off the web server? And this is my --
12 remember I got up there and I drew this box?
13 You know why he left off the web server and only
14 talked about FrontDoor? Because in the web
15 server is IIS and in the web server is HTTP.sys
16 that creates one request sits here, another
17 request sits there. He didn't want to talk
18 about it. He didn't want to talk about them,
19 because he had no explanation for how it is that
20 those limitations are met when you start talking
21 about HTTP.sys and IIS. I had to bring them up.

22 So, I will end with this. You are
23 the ultimate judges and I said I'm not going to
24 presume to tell you how to fill out the verdict

1 form. You've been unbelievably conscientious.
2 I know -- I'm sure when you first heard about
3 the technology I doubt you thought oh, I can't
4 wait to tell my loved once about this case, but
5 I hope you learned something during the case. I
6 hope that you ended up finding it interesting.
7 I hope some of our witnesses were able to kind
8 of explain to you. I didn't know before I
9 handled this case, because you know what's
10 interesting? As much as this does, as much as
11 what the inventors at Microsoft have
12 accomplished nobody gets to see it because it's
13 not the cool stuff that's out there that you can
14 see, but it's the stuff that without it the
15 whole thing would fall apart. And so I'm so
16 happy for them that they finally got to come and
17 tell people about what they did starting in 1993
18 with Bill Griffin and to this day with Mr. Alam
19 and Dr. Maltz. I'm really very proud to be
20 speaking on their behalf and I ask you to take
21 all of that into consideration when you go into
22 the jury room and render your verdict. Thank
23 you very much.

24 THE COURT: Okay. Mr. Bovenkamp.

1 Rebuttal.

2 MR. BOVENKAMP: Yes, Your Honor.

3 Thank you.

4 Microsoft's counsel started, Ms.
5 Brooks started her argument by saying that this
6 case is, for them, all about non infringement.
7 There was then a lot of talk about a lot of
8 stuff other than infringement. Don't let them
9 kid you. There was a lot of discussion about
10 damages, there was a lot of discussion about
11 their allegation that they infringe first -- or
12 they came out with their product first. There's
13 a lot of discussion about many things unrelated
14 to infringement and a lot of her closing
15 statements touched on those things.

16 There's questions on the verdict
17 form for something other than infringement, for
18 willfulness, for damages, because Microsoft has
19 kept those things in the case. They could have
20 chosen not to. If it's truly about the
21 principle of the thing, they could have chosen
22 to eliminate those issues so that all we were
23 here talking about was infringement. They
24 didn't.

1 You heard Ms. Brooks, on behalf of
2 Microsoft, argue that they believe they came
3 first. Well, the law provides a remedy for
4 that. They could have challenged Mr. Lowery's
5 patent. They could have alleged in this case
6 that his patent was invalid. You're not going
7 to be asked -- when you go back to the jury
8 room, look on that verdict form. There's no
9 question about whether Mr. Lowery's patent is
10 valid. It is. I showed you where on Mr.
11 Lowery's patents, one of them, their alleged
12 system, this '668 patent that Mr. Griffin talked
13 about, was on the list of things that the patent
14 office considered. And Microsoft's counsel
15 discussed what the significance of that was, but
16 here's what's of significant. The significance
17 was that the Patent and Trademark Office, in
18 their three-year examination, looked at that MSN
19 1.0 system, they looked at that patent and what
20 they concluded was that what Mr. Lowery came up
21 with, what he invented, was different. That's
22 the only reason he got a patent. They look at
23 all the art, including Microsoft's system and
24 they issued Mr. Lowery a patent. So don't let

1 Microsoft kid you, what they had in MSN 1.0
2 wasn't the same as what he came up with.

3 You heard evidence that what they
4 used in MSN 1.0 is different than what they're
5 doing today. And there's a reason for that.
6 MSN 1.0. I don't dispute that that was a
7 significant undertaking in that it took a lot of
8 time and a lot of effort and a lot of work, but
9 they changed what they did from MSN 1.0 from
10 what they're doing today in MSN and Bing. And
11 what they changed to is a system that Mr. Lowery
12 invented. That's what they changed to.

13 Now, at the beginning of
14 Microsoft's counsel's argument there was -- and
15 I'll briefly touch on, because I want to get to
16 infringement. I want to address the three
17 excuses they have of why they don't infringe.
18 Before I do that I want to touch on two other
19 things. First they say it's counterintuitive
20 that because our load times are greater it's
21 counterintuitive that we should get more money.
22 Well, here's the thing. The reason why the load
23 times are greater, the reason why there's this
24 45 milliseconds is not chance. So there's a lot

1 of things that in page load time are chance. It
2 has to go all the way from a client, it takes a
3 bunch of different hops through the internet to
4 servers that Microsoft doesn't control. It has
5 to go through a number of different systems that
6 Microsoft has, but Microsoft can control those.
7 Microsoft can control its own servers. And so
8 Microsoft and it's engineers, smart folks, we
9 don't dispute that, they built FrontDoor to be
10 exactly that 45 milliseconds. They could have
11 chosen to make it faster, they could have chosen
12 to make it slower. They chose for FrontDoor to
13 be that particular speed. So it wasn't chance
14 that it was that amount. And so the only
15 rational conclusion is if they designed it, they
16 built into the system this additional delay,
17 there had to be a reason for that.

18 And that's what Mr. Bone
19 explained. The reason for it. Because as
20 Dr. Jones explained, as Mr. Lowery explained,
21 the benefit of the patent is not necessarily for
22 a specific request. Think of the traffic
23 signal. For you sitting at a red light may
24 suck, but on the whole for all those cars

1 sitting in traffic because there is a red light,
2 because there is traffic signals, good things
3 happen. You can get to the place that you want
4 to go more quickly. That's the same thing that
5 happens in their system. There may be for a
6 specific request a little slow down that's 45
7 milliseconds, but because of that additional
8 processing, because of that additional thinking,
9 because of that additional determination of
10 where it can go, the whole system is not going
11 to crash. Think about the slow down if there
12 wasn't the 45 milliseconds, if there was just a
13 quicker routing, but it was done in a dumber
14 way, one of those systems went down and the
15 whole Bing system went down, the slow down then,
16 it would be incredible. That's what we're
17 talking about with overall benefit. And that's
18 what we're talking about, this designed 45
19 second increase and that's what there's at least
20 the value of to Microsoft.

21 Now, last thing I want to talk
22 about before I get to the three infringement
23 excuses is Terry Fokas. There was a suggestion
24 by Microsoft's counsel that Terry Fokas somehow

1 profited on the order of \$90 million from these
2 deals with the company. I want to set the
3 record straight. Investors did invest in
4 epicRealm when Terry Fokas was with them, but
5 they invested in epicRealm, they weren't paying
6 this money to Mr. Fokas. Mr. Fokas didn't make
7 this amount of money. What that money was used
8 for ultimately, and unfortunately because of the
9 customers going away, was paying off the debts
10 of epicRealm. Mr. Fokas came in here and he was
11 very clear about the companies and the
12 organization and, you know, maybe it was simple
13 for him to work all that out. I'm a trial
14 lawyer, I'm not a corporate lawyer, so it was a
15 little Greek to me as well, but the fact of the
16 matter is is that Mr. Fokas took out a second
17 mortgage on his house. I mean, you're not doing
18 that if you choose to. Mr. Fokas put a lot of
19 time and a lot of his own money into this and a
20 lot of other investors did too.

21 Mr. Lowery is still around, he's
22 still with the company, they still want to do
23 things with his patents. They still want to do
24 things with their intellectual property. And

1 that's a part of what we're asking for here, a
2 small part. We're asking for a fair value for
3 Mr. Lowery's patents from Microsoft. We think
4 10.8 is imminently fair.

5 Now, let me briefly address,
6 before I sit down, the non infringement
7 arguments that Microsoft went through and just
8 as we expected, they said they raised the
9 request issue, they raised the intercepted
10 issue, they raised the releasing issue. And I
11 want to observe something up front. There was a
12 slide they put up that I thought was pretty
13 interesting. They had Jones on one side and
14 they had Mr. Alam, they had Mr. Maltz and they
15 had Dr. Long. Dr. Maltz, I'm sorry. And
16 Dr. Long on the other side. And they said look
17 at this battle, Dr. Jones versus these three
18 folks. But you know Dr. Jones had someone else
19 on his side, someone that Microsoft didn't bring
20 to trial. He had Mr. Arunachalam, the guy that
21 knew this application server load balancer best,
22 the guy who knew about how the intelligent
23 system worked. He was on Dr. Jones' side. He
24 was someone that Dr. Jones relied upon. And

1 Dr. Jones went further than that. He traveled
2 across the country to California to look at
3 Microsoft source code. Dr. Long, he teaches at
4 Santa Cruz. Santa Cruz is in California, at
5 least the last I've heard. That's pretty close,
6 but yet he was too busy. He had taken
7 shortcuts, decided he didn't need to go look at
8 the source code. Why? Why wasn't Mr.
9 Arunachalam here?

10 They talked about request. It's
11 simple. There's one message that asks for a web
12 page. There's only one. Dr. Maltz said that
13 it's exactly the same what comes out of
14 FrontDoor than what went in. Mr. Alam, who they
15 rely upon for this issue, Mr. Campbell stood up
16 and asked him repeatedly what do you know about
17 FrontDoor, what do you know about FrontDoor,
18 what do you know about FrontDoor? I don't
19 really know anything, I know about IIS, but
20 FrontDoor I'm not sure. FrontDoor is what's at
21 issue in this case. Bing and MSN are what's at
22 issue in this case.

23 You heard the excuse of releasing.
24 But what you didn't hear, they brought up memory

1 again, they brought up connections again, but
2 what you didn't hear Ms. Brooks address was what
3 I told you they didn't address, processing
4 cycles. That's just as much a resource of the
5 web server and the HTTP-compliant device as
6 memory, as connections.

7 And lastly, intercepting. Don't
8 let them fool you. Don't fall for the smoke and
9 mirrors. Read the construction for yourself.
10 Diverting the handling, it's not diverting
11 before handling, it's diverting handling before
12 processing. That's what the Court is going to
13 tell you. Don't fall for it. What's
14 processing?

15 Well, when you process something,
16 it was the whole point of the invention, that
17 you don't do the generation of the web page at
18 the web server, you do it somewhere else. You
19 off-load.

20 It's straightforward. It's
21 simple. It's not as complicated as Microsoft
22 wants to suggest. You divert the handling,
23 there can be handling before, even a whole
24 bunch. But as long as before you dynamically

1 generate that web page it gets sent to a page
2 server, that limitation is met.

3 Ladies and gentlemen of the jury,
4 the lawyers who presented the case to you on
5 behalf of Keith Lowery and Parallel Networks, we
6 thank you for your time and attention. I know
7 it's been a long process. And we look forward
8 to your verdict.

9 THE COURT: Thank you, counsel.

10 Ladies and gentlemen of the jury,
11 as I said to you, I'm going to need to instruct
12 you on the law. That's going to take a few
13 minutes, so I think it probably would be wise if
14 we took a short break, shorter than usual.
15 We'll take a five, ten-minute break and then
16 I'll have you back in and instruct you on the
17 law and then the case will be yours.

18 Let's take the jury out.

19 (Jury leaving the courtroom at
20 11:43).

21 THE COURT: All right. I'll be
22 back and ready to roll in ten minutes. Okay.

23 (A brief recess was taken.)

24 THE COURT: All right. Thanks.

1 Please be seated for just a moment. Do we have
2 final versions? I asked that there would be for
3 sure a final version on the jury instruction and
4 verdict form. Do I have that?

5 MR. CAMPBELL: The verdict form I
6 don't because I don't think there were any
7 changes to it. We can get it quickly if you
8 need it.

9 THE COURT: I'll pass this back to
10 you folks to look at because I'm pretty darn
11 sure that's it, but I don't want any mistakes.

12 MR. CAMPBELL: If I can hand out
13 what I understand is a agreed revised
14 preliminary instruction for the invalidity,
15 agreed final jury instructions and then an
16 agreed supplemental instruction, they were
17 originally instructed on invalidity and that is
18 no longer part of the case.

19 THE COURT: That's great. If you
20 could hand that to the courtroom deputy.

21 Ms. Hufnal and Mr. Campbell, take
22 a look at that together and tell me if that
23 verdict sheet is right.

24 MS. HUFNAL: Your Honor, we have

1 one issue on the juror notebooks. They have the
2 claims in the juror notebooks. Those were
3 submitted I think before the narrowing of the
4 claims that happened right before trial started,
5 so they right now have claims in their juror
6 notebooks that are no longer at issue in the
7 case.

8 We have printed out pages that
9 just have the asserted claims, if the Court
10 would like to replace those.

11 THE COURT: No, I wouldn't. But
12 I'll tell them.

13 MS. HUFNAL: Okay.

14 THE COURT: I'm not going to try
15 to gather up nine notebooks that might have been
16 written in and start swapping pages. That would
17 be a good thing to know about before now. I
18 wasn't screening what you guys agreed to put in
19 there. So I'll just tell them, the claims that
20 are at issue, the only claims that are at issue
21 are the ones that you have heard about and that
22 are on the verdict sheet.

23 MS. HUFNAL: Thank you, Your
24 Honor.

1 THE COURT: All right.

2 MR. CAMPBELL: There is no change
3 from the preliminary instructions. Your Honor,
4 we have confirmed this is the correct verdict
5 form.

6 THE COURT: Great. That's the one
7 I'll send back. So please hand that back to the
8 courtroom deputy.

9 MR. CAMPBELL: Lastly, Your Honor,
10 housekeeping, and we can do this later or
11 however Your Honor wishes. You asked the
12 parties to confer on which portions of the
13 transcript from Tuesday need to be sealed.

14 THE COURT: Let's hold on now.
15 Let's get the jury in, I'll instruct them, I can
16 give them the case and then we can do whatever
17 clean up we have to do.

18 MR. CAMPBELL: Thank you, Your
19 Honor.

20 THE COURT: Let's get the jury in.
21 (Jury entering the courtroom at
22 11:50 a.m.)

23 THE COURT: All right. Thank you.
24 Please be seated, ladies and gentlemen.

1 We're at the last step before the
2 cases all yours.

3 As I told you, I'm going -- please
4 secure the courtroom. I need to read to you a
5 set of instructions, but don't worry, I'm going
6 to send this copy back with you as well. I'll
7 also send back with you a copy of the
8 preliminary jury instructions. They have been
9 slightly amended because at the beginning of the
10 case I instructed you that you need to determine
11 whether the patents-in-suit are valid or
12 invalid. Invalidity is no longer an issue in
13 the case, so that's been stripped out of these
14 preliminary instructions.

15 So that will give you one copy of
16 all the instructions that I have given you along
17 the way, preliminarily and the final set. I'll
18 also send back with you a copy of this verdict
19 form that you will be asked to fill out. I'll
20 tell you more about that.

21 Finally one other point.
22 Preliminarily you have been given juror
23 notebooks which listed some things that may or
24 may not have some claims that are mentioned in

1 there, but the only claims that are at issue in
2 the case are the ones that you have heard about
3 repeatedly and the ones that are listed on the
4 verdict form. Those are the only ones you need
5 to pay attention to. You'll see them listed out
6 in the verdict form, the claims that you have
7 been hearing about and which are listed here the
8 form.

9 All right. Members of the jury,
10 now it is time for me to instruct you about the
11 law that you must follow in deciding this case.

12 I will start by explaining your
13 duties and the general rules that apply in every
14 civil case. I will explain some rules that you
15 must use in evaluating particular testimony and
16 evidence. I will explain the positions of the
17 parties and the law you will apply in this case.
18 Last I will explain the rules that you must
19 follow during your deliberations in the jury
20 room. Please listen very carefully to
21 everything I say.

22 You will have a written copy of
23 these instructions with you in the jury room for
24 your reference during your deliberations. You

1 will also have a verdict formally, which will
2 list the interrogatories, or questions, that you
3 must answer to decide this case.

4 You have two main duties as
5 jurors. The first one is to decide what the
6 facts are from the evidence that you saw and
7 heard here in the court. Deciding what the
8 facts are is your job, not mine, and nothing
9 that I have said or done during this trial was
10 meant to influence your decisions about the
11 facts in any way.

12 Your second duty is to take the
13 law that I give you, apply it to the facts, and
14 decide which party should prevail on the issues
15 presented. I will instruct you about the burden
16 of proof shortly. It is my job to instruct you
17 about the law and you are bound by the oath that
18 you took at the beginning of the trial to follow
19 the instructions that I give you, even if you
20 personally disagree with them. This includes
21 the instructions that I gave you before and
22 during the trial, and these instructions. All
23 the instructions are important, and you should
24 consider them together as a whole.

1 Perform these duties fairly. Do
2 not let any bias, sympathy or prejudice that you
3 may feel towards one side or the other influence
4 your decision in any way.

5 You must make your decision based
6 only on the evidence that you saw and heard here
7 in the courtroom. Do not let rumors,
8 suspicions, or anything else that you may have
9 seen or heard outside of court influence your
10 decision in any way. The evidence in this case
11 includes only what the witnesses said while they
12 were testifying under oath, including deposition
13 testimony that has been played or read to you,
14 the exhibits that I allowed into evidence, and
15 any facts that the parties agreed to by
16 stipulation.

17 Nothing else is evidence. The
18 lawyers' statements and arguments are not
19 evidence. Their questions and objections are
20 not evidence. My legal rulings are not
21 evidence. None of my comments or questions are
22 evidence. The notes taken by any of you as
23 jurors are not evidence.

24 Certain charts and graphics have

1 been used to illustrates testimony from
2 witnesses. Unless I have specifically admitted
3 them into evidence, these charts and graphics
4 are not themselves evidence even if they refer
5 to, identify, or summarize the evidence.

6 During the trial I may have not
7 let you hear the answers to some of the
8 questions that the lawyers asked. I'm trying to
9 think, I'm not sure whether that happened or
10 not. I also may have ruled that you could not
11 see some of the exhibits that the lawyers wanted
12 you to see. And sometimes I may have ordered
13 you to disregard things that you saw or heard.
14 If that happened, you must completely ignore all
15 of those things. Do not speculate about what a
16 witness may have said or what an exhibit might
17 have shown. These things are not evidence, and
18 you are bound by your oath not to let them
19 influence your decision in any way.

20 Make your decision based only on
21 the evidence, as I have defined it here, and
22 nothing else.

23 Some of you may have heard terms
24 "direct evidence" and "circumstantial evidence."

1 Direct evidence is simply evidence
2 like the testimony of an eyewitness which, if
3 you believe it, directly proves a fact. If a
4 witness testified that he saw it raining
5 outside, and you believed him, that would be
6 direct evidence that it was raining.

7 Circumstantial evidence is simply
8 a chain of circumstances that indirectly proves
9 a fact. If someone walks into the courtroom
10 right now wearing a raincoat covered with drops
11 of water and carrying a wet umbrella, that would
12 be circumstantial evidence from which you could
13 conclude that it was raining.

14 It is your job to decide how much
15 weight to give the direct and circumstantial
16 evidence. The law makes no distinction between
17 the weights that you should give to either one,
18 nor does it say that one is any better evidence
19 than the other. You should consider all the
20 evidence, both direct and circumstantial, and
21 give it whatever weight you believe it deserves.

22 You should use your common sense
23 in weighing the evidence. Consider it in light
24 of your everyday experience with people and

1 events, and give it whatever weight you believe
2 it deserves. If your experience tells you that
3 certain evidence reasonably leads to a
4 conclusion, you are free to reach that
5 conclusion.

6 You may use notes taken during the
7 trial to assist your memory. Remember that your
8 notes are for your personal use. They may not
9 be given or read to anyone else. Do not use
10 your notes, or any other juror's notes, as
11 authority to persuade fellow jurors. Your notes
12 are not evidence, and they are by no means a
13 complete outline of the proceedings or a list of
14 the highlights of the trial.

15 Some testimony that is considered
16 unimportant at the time presented, and thus, not
17 written down, may take on greater importance
18 later on in the trial in light of all the other
19 evidence presented. Your notes are valuable
20 only as a way to refresh your memory. Your
21 memory is what you should be relying on when it
22 comes time to deliberate and render your verdict
23 in this case.

24 You, the jurors, are the sole

1 judges of the credibility, or the believability,
2 of the witnesses you have seen during the trial
3 and the weight their testimony deserves.

4 You should carefully scrutinize
5 all the testimony each witness has given and
6 every manner of evidence that tends to show
7 whether he or she is worthy of belief. Consider
8 each witness's intelligence, motive, and state
9 of mind, as well as his or her demeanor while on
10 the stand. Consider the witness's ability to
11 observe the matter as to which he or she has
12 testified and whether he or she impresses you as
13 having an accurate recollection of these
14 matters. Consider also any relation each
15 witness may bear to each side of the case, the
16 manner in which each witness might be affected
17 by the verdict, the interest any witness may
18 have in the verdict, and the extent to which, if
19 at all, each witness is either supported or
20 contradicted by other evidence in the case.

21 Discrepancies in the testimony of
22 different witnesses may, or may not, cause you
23 to discredit such testimony. Two or more
24 persons witnessing an incident or transaction

1 may see or hear it differently. Likewise, in
2 determining the weight to give to the testimony
3 of a witness, you should ask yourself whether
4 there was evidence tending to prove that the
5 witness testified falsely about some important
6 fact, or whether there was evidence that at some
7 other time the witness said or did something, or
8 failed to say or do something, that was
9 different, or inconsistent, from the testimony
10 that was given here during the trial. It is the
11 province of the jury to determine whether a
12 false statement or a prior inconsistent
13 statement discredits the witness's testimony.

14 You should remember that a simple
15 mistake by a witness does not mean that the
16 witness was not telling the truth. People may
17 tend to forget some things or remember other
18 things inaccurately. If a witness has made a
19 misstatement, you must consider whether it was
20 simply an innocent lapse of memory or an
21 intentional falsehood, and that may depend upon
22 whether it concerns an important fact or an
23 unimportant detail.

24 When knowledge of technical

1 subject matter might be helpful to the jury, a
2 person who has special training or experience in
3 that technical field -- we call such a person an
4 expert witness -- is permitted to state his or
5 her opinion on those technical matters.

6 However, you are not required to accept that
7 opinion. As with any other witness, it is up to
8 you to judge the credentials and the credibility
9 of the expert witnesses that have testified in
10 this case and decide whether to rely on their
11 testimony.

12 You should consider each expert
13 opinion received in evidence in this case, and
14 give it such weight as you think it deserves.
15 If you decide that the opinion of an expert
16 witness is not based upon sufficient education
17 and experience, or if you conclude that the
18 reasons given in support of the opinion are not
19 sound, or if you feel that the opinion is
20 outweighed by other evidence, you may disregard
21 the opinion in whole or in part.

22 During the trial, certain
23 testimony was presented to you through
24 depositions that were read into evidence or

1 played by video. This testimony must be given
2 the same consideration you would give it had the
3 witness personally appeared in court. Like the
4 testimony of a live witness, the statements made
5 in a deposition are made under oath and are
6 considered evidence that may be used to prove
7 particular facts.

8 I will now review for you the
9 parties in this action and the positions of the
10 parties that you will have to consider in
11 reaching your verdict.

12 The plaintiff, as you know, is
13 Parallel Networks Licensing, LLC, which we have
14 been referring to as Parallel Networks.

15 Defendant is Microsoft Corporation
16 which we have been referring to as Microsoft.

17 Parallel Networks is the owner of
18 U.S. Patent No. 5,894,554, which I have referred
19 to and the parties referred to as the '554
20 patent, and the U.S. Patent No. 6,415,335, which
21 I will be referring to in these instructions and
22 have referred to and you heard the parties refer
23 to it as the '335 patent. I may also refer to
24 these patents collectively as the

1 patents-in-suit.

2 Microsoft made, used, and operated
3 the Bing and MSN website systems during the
4 relevant time frame. I may refer to these
5 website systems collectively as the accused
6 products.

7 Parallel Networks contends that
8 Microsoft's accused products directly infringe
9 claims 20, 41 and 49 of the '554 patent, and
10 claims 43 and 78 of the '335 patent.

11 And you'll know that, not just
12 from what's been said, and what I said, but it's
13 in the verdict form.

14 These claims may be referred to as
15 the asserted claims. Parallel Networks further
16 contends that Microsoft's infringement was
17 willful.

18 Microsoft contends it does not
19 infringe the asserted claims of the '554 or the
20 '335 patent.

21 You will be asked to determine the
22 issue of infringement according to the
23 instructions I will give you in a moment.

24 First let me tell about the burden

1 of proof. In any legal action, facts must be
2 proven by a required standard of evidence, known
3 as the burden of proof. In a patent case such
4 as this, Parallel Networks must prove its claims
5 of patent infringement by a preponderance of the
6 evidence. When a party has the burden of proof
7 by a preponderance of the evidence, it means
8 that you must be persuaded that what the party
9 seeks to prove is more probably true than not
10 true.

11 To put it differently, if you were
12 to put Parallel Networks' and Microsofts'
13 evidence of infringement on opposite sides of a
14 scale, the evidence supporting Parallel
15 Networks' assertions would have to make the
16 scale tip somewhat to Parallel Networks' side.

17 If it is determined that Microsoft
18 infringes the asserted claims, Parallel Networks
19 also has the burden to establish the appropriate
20 amount of damages it should receive by a
21 preponderance of the evidence.

22 Those of you who are familiar with
23 criminal cases may have heard the terms proof
24 beyond a reasonable doubt. That burden does not

1 apply in a civil case and you, therefore, should
2 put it out of your mind in considering whether
3 or not Parallel Networks has met its burden of
4 proving infringement by a preponderance of the
5 evidence, that is more likely than not is the
6 scale.

7 Before you can decide many of the
8 issues in this case, you will need to understand
9 the role of patent claims. The patent claims
10 are the numbered sentences at the end of each
11 patent. And you've seen exhibits that show you
12 that repeatedly. The claims are important
13 because it is the words of the claims that
14 define what a patent covers. The claims are
15 intended to define, in words, the boundaries of
16 the invention described and illustrated in
17 patents.

18 Claims are usually divided into
19 parts, called limitations. For example, a claim
20 that covers the invention of a table may recite
21 the tabletop, four legs, and the glue that
22 secures the legs to the tabletop. The tabletop,
23 legs and glue are each a separate limitation of
24 the claim. A claim covering the invention of a

1 table is called an apparatus claim. The claim
2 describing the steps required to make a table is
3 call a method claim.

4 There are two different types of
5 claims in a patent. The first type is called an
6 independent claim and you've heard that word
7 used. An independent claim does not refer to
8 any other claim of the patent. An independent
9 claim is read alone to determine its scope.

10 For example, Claim 43 of the '335
11 Patent is an independent claim. You know this
12 because Claim 43 does not refer to any other
13 claims. Accordingly, the words of this claim
14 are read by themselves in order to determine
15 what the claim covers. Every limitation
16 relevant to the claim is in that claim.

17 The second type, a dependent
18 claim, refers to at least one other claim in the
19 patent and thus, incorporates whatever that
20 other claim says. Accordingly, to determine
21 what a dependent claim covers you must read both
22 the dependent claim and the claim or claims to
23 which it refers, because those referred to
24 claims have limitations in them.

1 For example, Claim 78 of the '335
2 Patent is a dependent claim. If you look at
3 Claim 78, it refers to Claim 43. Therefore, to
4 determine what Claim 78 covers, you must
5 consider the limitations of claims 78 and 43
6 together.

7 Several claims of the '554 and the
8 '335 patents use the transitional term
9 comprising. Comprising is interpreted the same
10 as the words including or containing. In patent
11 claims comprising means that the claims are
12 open-ended, that is, the claims are not limited
13 to products or methods that include only what is
14 in the claim and nothing else.

15 If you find that the accused
16 product or method includes all of the
17 limitations in any of the asserted claims that
18 use the term comprising, the fact that that
19 accused product may also include additional
20 elements or components is irrelevant. The
21 presence of additional elements or components
22 does not mean that the method or product does
23 not infringe a patent claim.

24 You will first need to understand

1 what each claim covers in order to decide
2 whether or not there is infringement of the
3 claim. The law says that it is my role to
4 define the terms of the claims and it is your
5 role to apply my definitions to the issues that
6 you are to decide in this case. You must accept
7 my definitions of these words in the claims as
8 being correct. It is your job to take these
9 definitions and apply them to the issues that
10 you are deciding, including the issue of
11 infringement. You must ignore any different
12 interpretation given to these terms by the
13 witnesses or by attorneys if that happened.

14 I instruct you that the following
15 claim terms have the following definitions:
16 Now, this is on page 16 of the instructions.
17 First, web page: Web content on the worldwide
18 web displayable by a web browser; second,
19 request, a message that asks for a web page;
20 third, web server, software or a machine having
21 software that receives web page requests and
22 returns web pages in response to the requests;
23 four, page server, page generating software that
24 generates a dynamic web page; fifth, dynamic web

1 page, a web page that is created in response to
2 a request; sixth, intercepting said request at
3 said web server slash HTTP-compliant device,
4 that means diverting the handling of said
5 request before the request is processed by the
6 web server slash HTTP-compliant device; seventh,
7 releasing said web server to process other
8 requests, that means freeing the web server to
9 process other requests; eight, HTTP-compliant
10 device meaning a device running software that
11 implements the communication protocol known as
12 hyper text transport protocol, HTTP; and last,
13 machine readable medium, meaning nontransitory
14 medium readable by a machine.

15 If I have not provided a specific
16 definition for a given term, you are to use the
17 ordinary meaning of that term. I'll repeat,
18 that set of definitions is on page 16 going over
19 to page 17 of the written instructions.

20 Now, let's talk about the law of
21 patent infringement. Parallel Networks has the
22 right to stop others from using the invention
23 covered by its patent claims during the life of
24 the patent. If any person makes or uses, within

1 the United States, or sells or offers to sell,
2 within the United States, what is covered by the
3 patent claims without Parallel Networks'
4 permission, that person is said to infringe the
5 patent.

6 In this case Parallel Networks
7 alleges that Microsoft directly infringes claims
8 20, 41 and 49 of the '554 Patent and claims 43
9 and 78 of the '335 Patent.

10 You must decide whether or not
11 Parallel Networks has proven by a preponderance
12 of the evidence that Microsoft has made or used,
13 within the United States, or sold or offered for
14 sale, within the United States, products or
15 services covered by any of the claims at issue
16 in this case.

17 If Microsoft infringes one claim
18 of the '554 or '335 patents, then Microsoft
19 infringes that patent, even if, in good faith,
20 Microsoft believed that it did not infringe.
21 Microsoft's knowledge or intent to infringe is
22 not relevant. You may have heard evidence that
23 Microsoft has its own patents. However,
24 ownership of patents is not a defense to patent

1 infringement and Microsoft can still infringe
2 even if it has its own patents in the same area.

3 In order to prove direct
4 infringement, Parallel Networks must prove that
5 each limitation of the asserted claims is
6 present in the accused products and services.

7 A claim limitation is literally
8 present if it exists in the accused product or
9 service just as it is described in the claim
10 language, either as I have explained that
11 language to you or, if I did not explain it, as
12 you understand its ordinary meaning.

13 Literal infringement must be
14 determined with respect to each asserted claim
15 individually by comparing the elements of the
16 accused product or service to each of that
17 claim's limitations. If the accused product or
18 service omits any single limitation recited in a
19 given claim, then you must have find that
20 Microsoft has not infringed that claim. You
21 must determine infringement with respect to each
22 asserted claim and each accused product or
23 method individually.

24 In determining whether any accused

1 product or service literally infringes any of
2 the asserted claims, you should take the
3 following steps:

4 First, you should determine the
5 scope of the asserted claim by reading the claim
6 language, limitation by limitation, as those
7 limitations have been construed by the court or,
8 if they have not been specifically construed,
9 according to their ordinary meaning. When I
10 said construed, I meant those definitions I read
11 to you.

12 And second, you should compare the
13 accused product or service, element by element,
14 to each of the limitations of the asserted
15 claim.

16 If you find each and every
17 limitation of the asserted claim in the accused
18 product or service, you must return a verdict of
19 infringement as to that claim.

20 If you do not find each and every
21 limitation of the asserted claim in the accused
22 product or service, you must return a verdict of
23 no infringement as to that claim.

24 You must repeat the above analysis

1 with every asserted claim. There is one
2 exception to this rule. If you find that an
3 independent claim is not infringed, there cannot
4 be infringement of any dependent claim that
5 refers directly or indirectly to that
6 independent claim.

7 On the other hand, if you find
8 that an independent claim has been infringed,
9 you must still decide, separately, whether the
10 product or method meets the additional
11 requirements of any claims that depend from that
12 independent claim, thus, whether those dependent
13 claims have also been infringed.

14 In this case, Parallel Networks
15 argues both that Microsoft infringed and,
16 further, that Microsoft infringed willfully. If
17 you have decided that Microsoft has infringed,
18 you must go on and address the additional issue
19 of whether or not this infringement was willful.
20 Willfulness requires you to determine whether
21 Parallel Networks proved by a preponderance of
22 the evidence that the infringement by Microsoft
23 was especially worthy of punishment, for
24 instance if Microsoft's infringement is wanton,

1 malicious, deliberate, consciously wrongful,
2 flagrant, or done in bad faith. If you conclude
3 that Microsoft infringed one or more of the
4 asserted claims of the patents-in-suit, then you
5 should consider Microsoft's knowledge and intent
6 at the time of the infringement of the '554 and
7 '335 patents in determining whether the
8 infringement was willful.

9 Let's turn to the topic of
10 damages. If you find that Microsoft infringed
11 any claim of either patent-in-suit, you must
12 then consider what amount of damages to award to
13 Parallel Networks. On the other hand, if you
14 find that each of the asserted patent claims is
15 not infringed, then you do not need to consider
16 damages in your deliberations. I will now
17 instruct you about the measure of damages. By
18 instructing you on damages, I am not suggesting
19 which party should win this case, on any issue.

20 The damages you award must be
21 adequate to compensate Parallel Networks for
22 infringement, if you find infringement. Your
23 damages award should put Parallel Networks in
24 approximately the same financial position that

1 it would have been in had the infringement not
2 occurred. You should not add anything to the
3 amount of damages to punish Microsoft or to set
4 an example.

5 Parallel Networks has the burden
6 to establish the amount of its damages by a
7 preponderance of the evidence. While Parallel
8 Networks is not required to prove the amount of
9 its damages with mathematical precision, it must
10 prove them with reasonable certainty. You may
11 not award damages that are speculative, damages
12 that are only possible, or damages that are
13 based on guesswork.

14 In this case, Parallel Networks
15 seeks a reasonable royalty. A reasonable
16 royalty is defined as the money amount Parallel
17 Networks and Microsoft would have agreed upon as
18 a fee for use of the invention at the time prior
19 to when the infringement began. Parallel
20 Networks is entitled to recover no less than a
21 reasonable royalty for each infringing sale
22 and/or use of Parallel Network's invention.

23 A royalty is a payment made to a
24 patent holder in exchange for the right make,

1 use, or sell the claimed invention. A
2 reasonable royalty is the amount of royalty
3 payment that a patent holder and infringer would
4 have agreed to in a hypothetical negotiation, as
5 I just mentioned, taking place at a time prior
6 to when the infringement first began. In
7 considering this hypothetical negotiation, you
8 should focus on what the expectations of the
9 patent holder and the infringer would have been
10 had they entered into an agreement at that time,
11 and had they acted reasonably in their
12 negotiations.

13 In determining this, you must
14 assume that both parties believed the patent was
15 valid and infringed and that both parties were
16 willing to enter into an agreement. The
17 reasonable royalty you determine must be a
18 royalty that would have resulted in a
19 hypothetical negotiation, and not simply a
20 royalty either party would have preferred.
21 Evidence of things that happened after the
22 infringement first began can be considered in
23 evaluating the reasonable royalty only to the
24 extent that the evidence aids in assessing what

1 royalty would have resulted from a hypothetical
2 negotiation.

3 Although evidence of the actual
4 profits Microsoft made may be used to determine
5 the anticipated profits at the time of the
6 hypothetical negotiation, the royalty may not be
7 limited or increased based on the actual profits
8 that Microsoft may have made.

9 In determining the reasonable
10 royalty, you should consider all the facts known
11 and available to the parties at the time the
12 infringement began. Some of the kind of factors
13 that you may consider in making your
14 determination are:

15 The royalties received by the
16 patentee for the licensing of the
17 patent-in-suit, proving or tending to prove an
18 established royalty.

19 The rates paid by the licensee for
20 the use of other patents comparable to the
21 patents-in-suit.

22 The nature and scope of the
23 license, as exclusive or nonexclusive, or as
24 restrict or nonrestricted in terms of territory

1 or with respect to whom the manufactured product
2 may be sold.

3 The licensor's established policy
4 and marketing program to maintain his or her
5 patent monopoly by not licensing others to use
6 the invention or by granting licenses under
7 special conditions designed to preserve the
8 monopoly.

9 The commercial relationship
10 between the licensor and licensee, such as
11 whether they are competitors in the same
12 territory in the same line of business, or
13 whether they are inventor and promoter.

14 The effect of selling the patented
15 specialty in promoting sales of other products
16 of the license, the existing value of the
17 invention to the licensor as a generator of
18 sales of his nonpatented items, and the extent
19 of such derivative or convoyed sales.

20 Derivative or convoyed sales
21 haven't been mentioned here, so I think you can
22 probably ignore that.

23 The duration of the
24 patents-in-suit and the term of the license.

1 The established profitability of
2 the product made under the patents, its
3 commercial success, and its current popularity.

4 The utility and advantages of the
5 patented property over the old modes or devices,
6 if any, that had been used for working out
7 similar results.

8 The nature of the patented
9 invention, the character of the commercial
10 embodiment of it as owned and produced by the
11 licensor, and the benefits to those who have
12 used the invention.

13 The extent to which Microsoft has
14 made use of the invention and any evidence
15 probative of the value of that use.

16 The portion of the profit or of
17 the selling price that may be customary in the
18 particular business or in comparable business to
19 allow use of the invention or analogous
20 inventions.

21 The portion of the realizable
22 profits that should be credited to the invention
23 as distinguished from nonpatented elements, the
24 manufacturing process, business risks, or

1 significant features or improvements added by
2 Microsoft.

3 The opinion and testimony of
4 qualified experts.

5 The amount that a licensor, such
6 as the patentee, and a licensee, such as
7 Microsoft, would have agreed upon at the time
8 the infringement began if both had been
9 reasonably and voluntarily trying to reach an
10 agreement; that is, the amount which a prudent
11 licensee -- who desired, as a business
12 proposition, to obtain a license to manufacture
13 and sell a particular article embodying the
14 patented invention -- would have been willing to
15 pay as a royalty and yet be able to make a
16 reasonable profit and which amount would have
17 been acceptable by a prudent patentee who was
18 willing to grant a license.

19 No one factor is dispositive and
20 you can and should consider the evidence that
21 has been presented to you in this case on each
22 of these factors. You may consider any other
23 factors which in your mind would have increased
24 or decreased the royalty Microsoft would have

1 been willing to pay and Parallel Networks would
2 have been willing to accept, acting as normally
3 prudent business people.

4 The damages for infringement of
5 patents-in-suit should be calculated beginning
6 on September 11, 2012.

7 Let me finish up by explaining
8 some things about your deliberations in the jury
9 room, and your possible verdicts.

10 Once you start deliberating, do
11 not talk to the jury officer, or to me, or to
12 anyone else except each other about the case.
13 When I say the jury officer, we'll swear one of
14 the courtroom security personnel to be outside
15 the jury room to make sure you're not disturbed
16 or interfered with in any way, but you don't
17 talk to that jury officer or me or anyone else
18 except each other about the case. If you have
19 any questions or messages, you must write them
20 down on a piece of paper, sign them, and then
21 give them to the jury officer. The officer will
22 give them to me and I will respond as soon as I
23 can. I will have to talk to the lawyers about
24 what you've asked, so it may take me some time

1 to get back to you if you have a question. Any
2 questions or messages normally should be sent to
3 me through your foreperson, who by custom of
4 this Court is the juror seated in the first row
5 in the first seat.

6 One more thing about messages. Do
7 not ever write down or tell anyone how you stand
8 on your votes. For example, do not write down
9 or tell anyone that you are split 4 to 5 or 6 to
10 3 or whatever your vote happens to be. That
11 should stay secret until you're finished.

12 Your verdict must represent the
13 considered judgment of each juror. In order for
14 you as a jury to return a verdict, it is
15 necessary that each juror agree to the verdict.
16 Your verdict must be unanimous.

17 It is your duty, as jurors, to
18 consult with one another and to deliberate with
19 a view towards reach an agreement, if you can do
20 so without violence to your individual judgment.
21 Each of you must decide the case for yourself,
22 but do so only after an impartial consideration
23 of the evidence with your fellow jurors. In the
24 course of your deliberations, do not hesitate to

1 reexamine your own views and change your
2 opinion, if convinced it is erroneous. But do
3 not surrender your honest conviction as to the
4 weight or effect of evidence solely because of
5 the opinion of your fellow jurors, or for the
6 purpose of returning a verdict. Remember at all
7 times that you are judges -- judges of the
8 facts. Your sole interest is to seek the truth
9 from the evidence in the case.

10 A form of verdict has, as I've
11 mentioned, been prepared for you. The verdict
12 form asks you a series of questions about the
13 parties' claims. Unless your directed otherwise
14 in the form of the verdict, you must answer all
15 of the questions posed, and you must agree on
16 each answer. Now, I'll repeat, you do that in
17 accordance with the way the verdict form is
18 structured and it will tell you how to proceed
19 if you've answered in a certain way. Okay.
20 When you have reached a unanimous verdict or
21 agreement as to the verdict, you will return
22 your verdict to the courtroom deputy.

23 It is proper to add the caution
24 that nothing said in these instructions and

1 nothing in the form of verdict is meant to
2 suggest or convey in any way or manner what
3 verdict I think you should find. What the
4 verdict shall be is the sole and exclusive duty
5 and responsibility of you, the jury.

6 Now that all the evidence is in
7 and the arguments are completed, you are free to
8 talk about the case in the jury room. In fact,
9 it's your duty to talk with each other about the
10 evidence and to make every reasonable effort you
11 can to reach a unanimous agreement. Talk with
12 each other, listen to each other carefully and
13 respectfully, hear each other's views and keep
14 an open mind as you listen to what your fellow
15 jurors have say.

16 Try your best to work out your
17 differences. Do not hesitate to change your
18 mind, again, if you are convinced that the
19 other, jurors are right and your original
20 position was wrong. But, again, do not ever
21 change your mind just because other jurors see
22 things differently, or just to get the case over
23 with. In the end your vote must be exactly
24 that -- your own vote. It is important for you

1 to reach unanimous agreement, but only if you
2 can do so honestly and in good conscience.

3 If any member of the jury took
4 notes, let me remind you the notes are not to be
5 given any greater weight than the memory or
6 impression of each juror as to what the
7 testimony may have been. Whether you took notes
8 or not, each of you must form and express your
9 own opinion as to the facts of the case.

10 No one will be allowed to hear
11 your discussions in the jury room, and no record
12 will be made of what you say. So you should all
13 feel free to speak your minds.

14 Listen carefully to what the other
15 jurors have to say, and then decide for
16 yourself.

17 Now, as you know, we generally end
18 our business each day at 4:30. If we do not
19 hear from you by 4:30, I will be sending you a
20 note to see whether you are close enough to a
21 verdict that you want to deliberate after 4:30
22 or whether you can going to recess for the
23 evening and resume your deliberations tomorrow.
24 You will need to respond in writing to that

1 question if you reach that point.

2 I am going to remind you now, if
3 you do go home this evening and resume your
4 deliberations tomorrow, you are not to talk
5 about the case among yourselves or with anyone
6 else during the evening recess. You are not to
7 read or listen to any news about the case, any
8 newspaper, online, or on television or radio.
9 I'm pretty sure it's not going to be there, but
10 you are not to go on the internet, you're not to
11 do anything like that if we end up having an
12 evening recess.

13 You may talk about the case only
14 while you are in the jury room and everyone on
15 the jury is present. Unless I hear from you
16 that you have a different schedule in mind, I
17 will expect you all to come back tomorrow at 9
18 o'clock so that you can start your deliberations
19 then. You are not to start deliberating until
20 you are all present in the jury room and
21 participating together. And again, these things
22 are all in the event that there's an evening
23 recess.

24 Because the lawyers have to make

1 themselves available to respond to questions or
2 receive the verdict, I generally will give them
3 between, you know, during a lunch hour, which
4 we're going to take right now, to step away from
5 the phone. So whenever you are deliberating
6 during lunch hour, let me remind you, if you ask
7 a question during this time, you probably are
8 not going to get an answer right away because
9 people will not be at their phones. Let me
10 finish up by repeating something I said to you
11 earlier. Nothing that I have said or done
12 during this trial was meant to influence your
13 decision in any way. You must decide the case
14 yourselves based on the evidence presented.

15 And finally, if I have read any of
16 these instructions inconsistently with the
17 written text you are to rely on the instructions
18 that I'm going to send back with you, okay? But
19 I think I did a pretty good job.

20 And before I ask the courtroom
21 deputy to swear you, I want to thank you for the
22 careful attention and patience and the
23 seriousness with which you've taken this. I
24 know the parties appreciate it. I do too. I'll

1 ask that the jury officer now be sworn.

2 (Jury officer sworn.)

3 THE COURT: Give me one moment
4 with the lawyers at side bar.

5 (Side bar discussion.)

6 THE COURT: Any issue with the
7 instructions I just read?

8 MR. CAWLEY: Not from Plaintiff.

9 MS. BROOKS: No, Your Honor.

10 THE COURT: Okay. Let's send them
11 back.

12 (Recess at 12:33 p.m.)

13 THE COURT: All right. Ladies and
14 gentlemen, the case is now yours. Thank you.
15 Please take the jury out.

16 (Jury leaving the courtroom at
17 12:35 p.m.)

18 THE COURT: Okay. Please be
19 seated. I'm going to send these packets to the
20 jury now. I made one mark on it to note if
21 there is a recess, they start their
22 deliberations at 9:00 and not 9:30 tomorrow
23 morning. That's the only change. I don't see
24 that that will cause anybody any difficulty. I

1 see by the head shaking that is not a problem
2 with anybody.

3 I'm sending the verdict form, the
4 revised jury instructions and the verdict
5 instructions that were given to me by the
6 parties. I'll give it to the courtroom deputy
7 to hand it to the jury at this time.

8 I'll ask counsel, you know, you
9 get your lunch break, but I do hope you have got
10 your cell phones with you and that you give the
11 courtroom deputy the number or numbers that you
12 want to be used sort of in order of priority in
13 the event that there are any questions and I
14 need to get ahold of you for some reason.

15 All right. And with that, I'll
16 say let's go off the record. I just would like
17 to shake your hands.

18 (Court recessed at 12:38 p.m.)

19 THE COURT: Let's have a seat
20 please. I've been waiting to get a call and
21 haven't gotten one, but I don't want to keep the
22 jury waiting, so I'm not sure -- who are we
23 still waiting for?

24 MS. BROOKS: Your Honor, it was

1 our client representative, Ms. Kwan. We
2 actually ran out of the office and forgot to
3 tell her and she's running here in the rain.

4 THE COURT: She's going to have to
5 run in the rain. So we have nine people waiting
6 who have put their lives on hold and I don't
7 think we should be keeping them any longer.
8 Let's go ahead and have the jury in.

9 (Jury enters.)

10 THE COURT: Thanks. Please be
11 seated, ladies and gentlemen. I received your
12 note signed by your foreperson saying, we have a
13 verdict. Please tell me what to do. And what
14 to do is if you would at this time hand the
15 verdict form to the courtroom deputy.

16 All right. This is your verdict?
17 I'll ask the foreperson.

18 THE JUROR: I'm sorry?

19 THE COURT: This is your verdict?

20 THE JUROR: Yes.

21 THE COURT: Okay. I'll ask the
22 deputy to read it.

23 COURTROOM DEPUTY: Okay.

24 Infringement as to Question Number 1, has

1 Parallel Networks proven by a preponderance of
2 the evidence that Microsoft directly infringed
3 the following claims of the patents-in-suit by
4 making or using Bing and/or MSN?

5 And the jury has marked for the
6 '554 patent claims as to Claim 20, the answer is
7 no. Claim 41, no. Claim 49, no. As to the
8 '335 Patent claims, Claim #43, the jury has
9 marked no. Claim 78 is no.

10 THE COURT: And the remainder of
11 the verdict form, as instructed, remains blank.

12 Are there any applications from
13 the parties?

14 All right. I'll see counsel at
15 side bar.

16 (Side bar discussion.)

17 THE COURT: Polling of the jury or
18 anything else before I release them?

19 MR. CAWLEY: I don't think we need
20 jury polling.

21 THE COURT: Then I'll release
22 them. We'll be ready to wrap up then.

23 MS. BROOKS: Thank you.

24 (Side bar discussion ends.)

1 THE COURT: All right. Ladies and
2 gentlemen of the jury, thank you very much for
3 your service. That concludes your service on
4 this case. On behalf of the parties and on
5 behalf of the United States, I thank you very,
6 very much. You're free to return the jury room,
7 obtain your things and exit. The courtroom
8 deputy will help you with that.

9 (Jury exits.)

10 THE COURT: Okay. Please have a
11 seat. I don't know whether there's -- as far as
12 post trial motions, et cetera, like that go, you
13 each have local counsel and will advise, let me
14 know about that.

15 Is there anything else that needs
16 to be addressed before we conclude here in the
17 courtroom today?

18 MR. CAWLEY: Not from the
19 Plaintiff, Your Honor.

20 THE COURT: All right.

21 MS. BROOKS: Nothing from the
22 defense. Thank you, Your Honor.

23 THE COURT: All right. Thank you
24 very much.

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(End at 2:44 p.m.)

1 State of Delaware)
2)
3 New Castle County)
4

5 CERTIFICATE OF REPORTER
6

7 I, Dale C. Hawkins, Registered Merit
8 Reporter, Certified Shorthand Reporter, and Notary
9 Public, do hereby certify that the foregoing record,
10 Pages 1,082 to 1,270 inclusive, is a true and
11 accurate transcript of my stenographic notes taken on
12 May 11, 2017, in the above-captioned matter.
13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 11th day of May 2017, at
16 Wilmington.
17

18
19 /s/ Dale C. Hawkins

20 Dale C. Hawkins, RMR
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22
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